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Supreme Court, U.S.
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No. A-

IN THE
Supreme Court of the United States

OCTOBER TERM 1992

THE 1975 SALARIED RETIREMENT PLAN
FOR ELIGIBLE EMPLOYEES
OF CRUCIBLE, INC., ET AL.,
Petitioners,

v.

DAVID A. NOBERS, ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

The Employee Retirement Security Act of 1974 ("ERISA") mandates exclusive federal court jurisdiction for most of the claims it governs, and therefore state courts are *without jurisdiction* to entertain most claims governed by ERISA. With unique clarity, this case presents questions raised by ERISA's jurisdictional scheme, and the power of the lower federal courts to implement that scheme. Most generally stated, the question is whether the statutory exceptions to the Anti-Injunction Act, 28 U.S.C. § 2283, permit injunctions to enforce ERISA's exclusive federal jurisdiction?

More specifically, do the statutory exceptions to the Anti-Injunction Act permit the lower federal courts to: (1) enjoin state court litigation that is being conducted without jurisdiction (in violation of ERISA)?; (2) enjoin ERISA plan participants from evading the administrative remedies provided under ERISA and the terms of the plans?; (3) enjoin a state court proceeding to protect or effectuate a federal declaratory judgment issued at the request of ERISA plan fiduciaries?

LIST OF PARTIES

Petitioners (Plaintiffs/Appellants below) are ERISA plans and their administrators. The Petitioner ERISA plans, and ERISA plan administrators are: The 1975 Salaried Retirement Plan for Eligible Employees of Crucible, Inc. (an ERISA defined benefit pension plan); The Colt Industries Operating Corporation Severance Plan for Salaried, Nonunion Employees (an ERISA welfare benefit plan); Coltec Industries Inc (administrator of the foregoing ERISA plans); The Pension Plan for Collectively Bargained Employees of Midland Operations of Crucible, Inc. (an ERISA defined benefit pension plan); The Supplemental Unemployment Benefit Plan for Collectively Bargained Employees of Midland Operations of Crucible Inc (an ERISA welfare benefit plan); The Severance Allowance Plan for the Collectively Bargained Employees of Midland Operations of Crucible Inc (an ERISA welfare benefit plan); and The Retirement Committee of Coltec Industries Inc (administrator of the remaining ERISA plans).

Respondents (Defendants/Appellees below) are four individuals, David A. Nobers, Robert R. Campbell, Gasper P. Porto, and Gary T. Weekley. To the best knowledge and information of Petitioners, Respondents are participants of Petitioners The 1975 Salaried Retirement Plan for Eligible Employees of Crucible, Inc., and have received all the benefits to which they are entitled under The Colt Industries Operating Corporation Severance Plan for Salaried, Nonunion Employees.

LIST OF PARENT COMPANIES AND NON-WHOLLY OWNED SUBSIDIARIES

The stock of Coltec Industries Inc has been publicly traded since April 1, 1992. Coltec Holdings Inc owns 36.1% of the stock of Coltec Industries Inc. The stock of Coltec Holdings Inc is not publicly traded; however, Morgan Stanley Group, Inc., a publicly traded company, owns a controlling interest in Coltec Holdings Inc.

Garlock Inc is a wholly owned subsidiary of Coltec Industries Inc. Garlock Inc has four subsidiaries that are not wholly owned: Garlock Bearings Inc, Garlock de Mexico, S.A., Louis Mulas Sucs., S.A., and Garlock Pty. Ltd. Minority interests in each of these four subsidiaries are privately held by foreign investors.

Coltec Industries Inc is the successor of Colt Industries Inc. Prior to December 31, 1982, Crucible Inc was a wholly owned subsidiary of Colt Industries Inc. Certain former operations of Crucible Inc are now held by Crucible Materials Corp, a nonpublic company that is not affiliated with Coltec Industries Inc.

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

THE OPINION BELOW

This petition for writ of *certiorari* is from a judgment of the Court of Appeals for the Third Circuit, entered July 6, 1992, in *The 1975 Salaried Retirement Plan for Eligible Employees of Crucible, Inc.*, 968 F.2d 401, 61 U.S.L.W. 2059, 15 Emp. Benefits Cas. (BNA) 197, 122 Lab. Cas. (CCH) ¶10,268, 1992 U.S. App. LEXIS 15095, 1992 WL 150922 (3d Cir. July 6, 1992), *reprinted in* Petitioners' Appendix at 1a [hereinafter "App."]. The Third Circuit judgment was entered in an appeal of an unreported order of the United States District Court for the Western District of Pennsylvania. (App. at 24a.)[1]

[1] The following cases are related: *Nobers v. Crucible, Inc.*, No. 82-1846 (W.D. Pa.), *aff'd without opinion*, 722 F.2d 733 (3d Cir. 1983) (*Nobers I*); *Colt Industries v. Nobers*, No. 85-563 (W.D. Pa. Aug. 12, 1985), *aff'd without opinion*, 787 F.2d 581 (3d Cir. 1986); *Nobers v. Crucible, Inc.*, No. 843-1984 (C.P. Beaver County), *order dismissing case rev'd*, 545 A.2d 367 (Pa. Super. Ct. 1988), *appeal denied*, 559 A.2d 38 (Pa. 1989) (*Nobers II*).

STATEMENT OF JURISDICTION

This Court has jurisdiction to review the Third Circuit's judgment by writ of *certiorari* pursuant to 28 U.S.C. § 1254(1). The district court below had jurisdiction pursuant to section 502(a)(3) and (e)(1) of the Employee Retirement Income Security Act of 1974, Pub.L.No. 93-406, 88 Stat. 891 (codified at 29 U.S.C. § 1132(a)(3) and (e)(1)) [hereinafter "ERISA"]. *Certiorari* is appropriate both because this case raises an important question of federal law which has not been, but should be, settled by this Court, and because the Third Circuit's decision is in conflict with decisions of the Sixth and Second Circuits, while the Fifth Circuit has issued one decision in accordance with the Third Circuit and another decision that is in indirect conflict.

RELEVANT STATUTORY AUTHORITIES

The Anti-Injunction Act, 28 U.S.C. § 2283:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

ERISA section 502(e)(1) ("Civil Enforcement"):

> (e) *Jurisdiction*
>
> (1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section.

ERISA section 502(a)(1)(B) ("Civil Enforcement"):

> (a) *Persons empowered to bring a civil action*
>
> A civil action may be brought—
>
> (1) by a participant or beneficiary—

* * *

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan[.]

ERISA section 502(a)(3) ("Civil Enforcement"):

(a) *Persons empowered to bring a civil action*

A civil action may be brought—

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan[.]

STATEMENT OF THE CASE

Background

This petition for writ of *certiorari* arises out of a suit for declaratory judgment and injunctive relief filed in the United States District Court for the Western District of Pennsylvania by Petitioners, who are ERISA plans (the "Plans") and their administrators. The factual and procedural history of this litigation is summarized in the opinion of the Court of Appeals for the Third Circuit. (App. at 4a-7a.)

Petitioner Plans provide benefits to former and current employees of Crucible Inc ("Crucible") (and Crucible's corporate successors). In 1982, Crucible announced the closing of its steelmaking facilities at Midland, Pennsylvania. The Midland facilities had employed workers who were members of the United Steelworkers of America, as well as salaried workers who did not belong to any union. Two separate sets of ERISA plans cover Crucible's union employees, and its salaried non-union employees.[2]

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[2] The plans covering Crucible's union employees include Petitioners The Pension Plan for Collectively Bargained Employees of Midland Operations of Crucible, Inc., The Supplemental Unemployment Benefit Plan for

Respondents are former employees of Crucible who, in the course of their employment, had been promoted from union to salaried non-union positions, and who remained in salaried non-union positions throughout the remainder of their employment. Shortly after the Midland closing was announced, Respondents brought a class action lawsuit in federal district court, seeking to compel Crucible to demote them back into the union so that they could receive benefits under the Collective Bargaining Unit Plans rather than the Salaried Plans. *Nobers v. Crucible, Inc.*, No. 82-1846 (W.D. Pa.), *aff'd without opinion*, 722 F.2d 733 (3d Cir. 1983) (*Nobers I*) (App. at 28a.) The district court found that Crucible had no contractual obligation under the collective bargaining agreement (neither express nor arising from past practice) to demote Respondents. The district court also dismissed Respondents' ERISA claim for failure to exhaust administrative remedies, and instructed Respondents to apply to the administrators of the Collective Bargaining Unit Plans. Respondents meanwhile commenced receiving benefits under the terms of the Salaried Plans, and indeed *applied* for Salaried Plan benefits.

However, Respondents, ignoring the district court's instruction to apply directly to the Collective Bargaining Unit Plans, instead filed suit in the Court of Common Pleas of Beaver County, Pennsylvania (*Nobers v. Crucible, Inc.*, No. 843-1984 (C.P. Beaver County), *order dismissing case rev'd*, 545 A.2d 367 (Pa. Super. Ct. 1988), *appeal denied*, 559 A.2d 38 (Pa. 1989) (*Nobers II*) (App. at 61a, 41a, 7a)), seeking the same relief they had sought in *Nobers I*. Crucible and its parent company, Colt Industries Inc ("Colt"), as defendants in the state court action, twice sought to remove *Nobers II* to federal court (from which it has twice been remanded) and

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Collectively Bargaining Employees of Midland Operations of Crucible Inc, and The Severance Allowance Plan for the Collectively Bargained Employees of Midland Operations of Crucible Inc (collectively the "Collective Bargaining Unit Plans"). The plans covering Crucible's salaried, non-union employees include Petitioners The 1975 Salaried Retirement Plan for Eligible Employees of Crucible, Inc. and The Colt Industries Operating Corporation Severance Plan for Salaried, Nonunion Employees (collectively the "Salaried Plans").

sought an injunction of *Nobers II* on *res judicata* grounds (which was denied).

Throughout this time, Respondents have never presented a claim to the Plans' administrators, as they were instructed to do by the district court in *Nobers I*. Therefore, Petitioners have invoked the equity jurisdiction of the district court under section 502(a)(3) and (e)(1) of ERISA, to obtain guidance regarding whether Respondents are already receiving all the benefits to which they are entitled from the proper Plans. *See Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 112 (1989). Petitioners also requested the district court to provide injunctive relief to compel Respondents to assert their claims against the proper parties in the proper forum in compliance with ERISA's substantive and jurisdictional provisions: (1) claims for benefits must be asserted against the applicable Plans and may be alleged in either state or federal court, but only after exhaustion of administrative remedies; whereas (2) claims against an employer (Crucible) or other third party (such as Colt) for interference with rights to benefits entitlements must be asserted in federal court pursuant to ERISA section 510. *See infra* Part A.

The district court has exclusive jurisdiction of Petitioners' requests under ERISA section 502(a)(3) and (e)(1). Petitioners' request for declaratory judgment is pending before the district court. The district court prospectively denied injunctive relief, including injunctive relief to enforce any declaratory judgment the district court may ultimately issue on behalf of Petitioners, and entered final judgment as to that holding. (App. at 24a, 23a.)

Appellate Decision

On appeal, the Third Circuit held that the claims alleged by Respondents in the Pennsylvania courts in *Nobers II* are *both* (1) preempted by ERISA under ERISA section 514(a) *and* (2) subject to exclusive federal jurisdiction under ERISA section 502(e)(1). (App. at 4a.)[3] The Third Circuit then

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[3] It is equally true that Petitioners' lawsuit for declaratory judgment and injunctive relief – the action from which this petition arises – is *both*

noted that "the Pennsylvania court's assumption of jurisdiction over *Nobers II* is in violation of ERISA's supersedure provisions." (App. at 14a.) More accurately, the Pennsylvania court's assumption of jurisdiction over *Nobers II* is in violation of ERISA's mandate of exclusive federal jurisdiction, *see infra* Part A; the point is not whether the Pennsylvania courts are disposed to apply federal law, (App. at 14a), but rather that the Pennsylvania courts lack jurisdiction altogether. However, the Third Circuit held, erroneously, that the Anti-Injunction Act, 28 U.S.C. § 2283, renders the federal courts powerless to enforce ERISA's exclusive federal jurisdiction with injunctive relief. Instead, the Third Circuit merely suggested that "[p]erhaps the Pennsylvania trial and intermediate appellate courts will now reconsider their holding." (App. at 14a.)

The Third Circuit failed to recognize that the statutory exceptions to the Anti-Injunction Act permit the injunctive relief that Petitioners seek. Indeed, two other Circuit Courts, *see infra* Part E, have held that injunctive relief is available under the statutory exceptions to the Anti-Injunction Act, which permit federal injunctions of state judicial proceedings "[1] as expressly authorized by Act of Congress, or [2] where necessary in aid of its jurisdiction, or [3] to protect or effectuate its judgments." The application of any one of these three independent exceptions is sufficient to justify injunctive relief here.

The Third Circuit denied injunctive relief under the "expressly authorized" exception based largely on a misguided expansion of its previous decision in *United States Steel Corp. Plan for Employee Ins. Benefits v. Musisko*, 885 F.2d 1170 (3d Cir. 1989), *cert. denied*, 493 U.S. 1074 (1990). As discussed *infra* Part B, the state court had jurisdiction in *Musisko* (even though it may have applied the wrong law), and the state court's concurrent jurisdiction was key to the denial of injunctive relief. The state court in *Nobers II* does not have concurrent jurisdiction, and therefore *Musisko* has no precedential bearing on this case. The Third Circuit

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preempted by ERISA *and* subject to exclusive federal jurisdiction under ERISA. ERISA sections 514(a), 502(a)(3), (e)(1).

denied injunctive relief under the "necessary in aid of jurisdiction" exception because of an overly narrow reading of the exception, and misplaced concerns regarding judicial comity – judicial comity is meaningless where the state court simply lacks jurisdiction. *See infra* Part C. Finally, the Third Circuit denied injunctive relief under the third statutory exception primarily because of mistaken reluctance to reexamine an earlier request for injunctive relief. *See infra* Part D.

The Third Circuit erred as to the application of all three exceptions. Its misconstruction of the first two exceptions is especially problematic because of their general application – not only in this case – but as to all proceedings that threaten ERISA's mandate of exclusive federal jurisdiction. *See infra* Part A.

ARGUMENT

ERISA provides a civil remedial scheme that is for the most part enforceable only in the federal court system, to the exclusion of state judiciaries. The matter of jurisdiction under ERISA must be considered in tandem with – but separate from – ERISA's preemption of state law. This Court has already issued opinions in a series of cases that establish the very broad outlines of ERISA's preemption of state law.[4] The instant question of jurisdiction to adjudicate ERISA claims is separate from, but no less important than, the question of ERISA preemption.

This case presents an excellent opportunity, based on clearly defined factual and legal issues, to provide guidance regarding the implementation of ERISA's important and unusual jurisdictional scheme, in the context of whether the

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[4] *Ingersoll-Rand Co. v. McClendon*, 111 S. Ct. 478 (1990); *FMC Corp. v. Holliday*, 111 S. Ct. 403 (1990); *Massachusetts v. Morash*, 490 U.S. 107 (1989); *Mackey v. Lanier Collection Agency & Serv.*, 486 U.S. 825 (1988); *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1 (1987); *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987); *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987); *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724 (1985); *Shaw v. Delta Air Lines*, 463 U.S. 85 (1983); *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1 (1982); *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981).

statutory exceptions to the Anti-Injunction Act, 28 U.S.C. §2283, permit the federal courts to enjoin state judicial proceedings that violate ERISA's jurisdictional scheme. The lower courts' failure to protect the exclusive jurisdiction of the federal courts has caused tremendous problems in this case which, if uncorrected, can only lead to worse problems – not just in this case, but more generally for ERISA plans and sponsoring employers. This Court should grant *certiorari* to provide guidance to the lower federal and state courts regarding ERISA jurisdiction, and in particular to instruct the lower federal courts on the question of whether, how and under what circumstances they are empowered to enforce the exclusive federal jurisdiction mandated by ERISA.

A. ERISA's Carefully Drawn Jurisdictional Scheme Severely Restricts State Court Jurisdiction

To understand why injunctive relief must be available, it is imperative first to recognize the unusual nature of the jurisdictional scheme implemented in ERISA. Virtually all legal disputes that arise within ERISA's comprehensive framework may *only* be adjudicated in the federal courts. This is explicitly and unambiguously stated in section 502(e)(1) of ERISA, which provides (emphasis added) that "the district courts of the United States shall have *exclusive* jurisdiction" of most claims that come within the broad scope of ERISA's preemption.

ERISA's jurisdictional scheme is by explicit and deliberate legislative design. Congress implemented it only after considering and rejecting several alternatives, including early proposals which (1) would have made the state courts the

primary avenue for judicial enforcement of ERISA,[5] and (2) envisioned selective preemption of state law.[6]

The initial legislative drafts were abandoned in favor of a scheme that extensively preempts state law, and that also sharply curtails state court jurisdiction so as to direct substantive litigation to the federal courts.[7] In the jurisdictional scheme that Congress enacted, there is only a single type of ERISA claim over which the federal *and* state courts *share* concurrent jurisdiction; claims by participants and beneficiaries *against ERISA benefit plans* to recover benefits, or to enforce or clarify benefit rights governed by the terms of the *plans*, are enforced pursuant to ERISA section 502(a)(1)(B), and subject to concurrent state and federal court jurisdiction under ERISA section 502(e)(1). Judicial review of this type of claim – whether in state or federal court – is circumscribed

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[5] The House of Representatives originally proposed concurrent jurisdiction across the board, with limited federal court jurisdiction. H.R. 2, 93d Cong., 1st Sess. § 106(g)(1) & (h) (1973), *reprinted in* 1 Staff of Senate Comm. on Labor and Public Welfare, 94th Cong., 2d Sess., Legislative History of the Employee Retirement Income Security Act of 1974 at 3, 34-35 (Comm. Print 1976) [hereinafter Legislative History]. The initial Senate bill agreed that federal and state courts should have concurrent jurisdiction over all ERISA claims, but provided somewhat more liberal access to the federal courts. S. 4, 93d Cong., 1st Sess. § 604 (1973), *reprinted in* 1 Legislative History, *supra*, at 93, 184.

[6] S. Rep. No. 127, 93d Cong., 1st Sess. 35 (1973), *reprinted in* 1974 U.S. Code Cong. & Admin. News 4838, 4871, *and in* 1 Legislative History, at 587, 621; H.R. Rep. No. 533, 93d Cong., 1st Sess. 17 (1973), *reprinted in* 1974 U.S.C.C.A.N. 4639, 4655, *and in* 2 Legislative History, *supra*, at 2348, 2364. Congressional leaders eventually recognized, however, that selective preemption would "raise[] the possibility of endless litigation over the validity of State action that might impinge on Federal regulation, as well as opening the door to multiple and potentially conflicting State laws." 120 Cong. Rec. 29942 (1974), *reprinted in* 3 Legislative History, *supra*, at 4733, 4770-71 (statement of Sen. Javits).

[7] Staff of the House and Senate Conferees on H.R. 2, Summary of Differences Between the Senate Version and the House Version of H.R. 2 to Provide for Pension Reform, pt. 3, at 26 (Comm. Print 1974), *reprinted in* 3 Legislative History app., *supra*, at 5249, 5276 (recommending limited state court jurisdiction); H.R. Conf. Rep. No. 1280, 93d Cong., 2d Sess. 76 (1974), *reprinted in* 3 Legislative History, *supra*, at 4277, 4350-52 (enacting Staff recommendation of limited state court jurisdiction).

and fact specific because rights to receive benefits are established by the terms of individual plans, and because the plans must be interpreted in the first instance by their administrators.[8] Concurrent state court jurisdiction of such claims does not threaten the unity of ERISA's regulatory scheme because of the narrow scope of judicial review.

Congress chose to funnel all other ERISA claims exclusively to the federal courts to provide uniform federal development of the law in this complex and sensitive area. *See McClendon*, 111 S. Ct. at 484.[9] Federal courts are the only forums that have jurisdiction to sort out the rights and liabilities of all affected parties (including plan sponsors and fiduciaries) in a comprehensive manner.

This is an unusual scheme. It is understandable that the lower courts are unclear about the implications of ERISA's exclusive federal jurisdiction. Having preempted state law, ERISA substitutes its own complex remedial scheme, which ousts the state courts of jurisdiction over all but a single narrow subclass of the remedies that ERISA provides (those claims governed by section 502(a)(1)(B)).

Statutes that, like ERISA, mandate exclusive federal jurisdiction are few and far between. Most federal statutes create federal causes of action that may be enforced in both

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[8] Even in cases where the standard of judicial review of the plan administrator's determination is plenary, *see Bruch*, 489 U.S. 101, the substance of the court's review is constrained by the terms of the benefit plan in question.

[9] *See also* 120 Cong. Rec. 29933 (1974), *reprinted in* 1974 U.S.C.C.A.N. 5177, 5188, *and in* 3 Legislative History, *supra*, at 4733, 4745 (remarks of Sen. Williams); Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 1280, 93d Cong., 2d Sess. 327 (1974), *reprinted in* 1974 U.S.C.C.A.N. 4639, 5038, 5107, *and in* 3 Legislative History, *supra*, at 4518, 4594. For example, ERISA section 510 is a "substantive" provision that must be enforced in the federal courts; it confers a right to be free of interference with benefit entitlements – a right that exists independent of the terms of any particular plan. ERISA's provisions governing the duties of plan fiduciaries, sections 401-414, are another example of the substantive provisions of title I of ERISA that must be enforced in the federal courts.

federal and state courts.[10] The very few federal statutes that mandate exclusive federal jurisdiction usually concern matters of such an obviously federal nature that litigants and courts alike generally recognize that claims arising in that area belong in the federal courts, so that there is minimal confusion regarding whether state courts have jurisdiction.[11] ERISA is different precisely because it *withholds* jurisdictional authority from the state courts, in an area where the state courts previously had jurisdiction and state law previously dominated.

Various state law causes of action (largely in contract) that the state courts once had jurisdiction to entertain have now been preempted by ERISA and replaced by ERISA claims that the state courts largely lack jurisdiction to entertain. As this case amply illustrates, state and federal courts are still wrestling with the effects of ERISA's total restructuring of the law in this area.

B. ERISA "Expressly Authorizes" Injunctive Relief Within The Meaning Of The Anti-Injunction Act

The Anti-Injunction Act, 28 U.S.C. § 2283, provides (emphasis added): "A court of the United States may not grant an injunction to stay proceedings in a State court *except [1] as expressly authorized by Act of Congress, or [2] where*

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[10] *E.g., Yellow Freight Sys. v. Donnelly*, 494 U.S. 820 (1990) (Title VII of the Civil Rights Act of 1964); *Tafflin v. Levitt*, 493 U.S. 455 (1990) (Racketeer Influenced and Corrupt Organizations Act); *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473 (1981) (Outer Continental Shelf Lands Act); *Dowd Box Co. v. Courtney*, 368 U.S. 502 (1962) (section 301 of the Labor Management Relations Act).

[11] Federal statutes do not always provide remedies that, like ERISA's remedies, displace existing state law remedies. Instead, federal statutes often forge new ground – as is the case, for example, with federal antitrust and civil rights legislation. Furthermore, the primacy of federal law and federal jurisdiction in areas such as bankruptcy and patents is well known and widely acknowledged. Even in areas where a federal statute does not mandate exclusive federal jurisdiction, the federal nature of the claim may be so obvious that litigants and courts are inclined to assume (sometimes erroneously) that the federal courts have exclusive jurisdiction. *See, e.g., Yellow Freight*, 494 U.S. at 822 n.2; *Tafflin*, 493 U.S. at 458 n.1.

necessary in aid of its jurisdiction, or [3] to protect or effectuate its judgments." Contrary to the Third Circuit's conclusion, ERISA is a statute that "expressly authorizes" injunctive relief.

This Court has provided the following guidance as to the form of "express authorization" sufficient to justify application of this exception to the Anti-Injunction Act:

> In the first place, it is evident that, in order to qualify under the "expressly authorized" exception of the anti-injunction statute, a federal law need not contain an express reference to that statute [ ]. Indeed, none of the previously recognized statutory exceptions contains any such reference. Secondly, a federal law need not expressly authorize an injunction of a state court proceeding in order to qualify as an exception. Three of six previously recognized statutory exceptions contain no such authorization. Thirdly, it is clear that in order to qualify as an 'expressly authorized' exception to the anti-injunction statute, an Act of Congress must have created a specific and uniquely federal right or remedy, enforceable in a federal court of equity, that could be frustrated if the federal court were not empowered to enjoin a state court proceeding.

Mitchum v. Foster, 407 U.S. 225, 237 (1972) (footnotes and citation omitted).

ERISA certainly falls within the test articulated in *Mitchum*. ERISA section 502(e)(1) prohibits the state courts from exercising jurisdiction over ERISA-preempted claims – with the sole exception that state courts share concurrent jurisdiction over claims governed by ERISA section 502(a)(1)(B). *See supra* Part A. ERISA section 502(a)(3) provides that ERISA plan participants, beneficiaries and fiduciaries may seek injunctions against acts or practices that violate ERISA or the terms of an ERISA plan. Read together, ERISA sections 502(a)(3) and (e)(1) provide ample statutory "authorization" for the federal courts to enjoin the state courts from attempting to exceed the jurisdiction allocated to them under ERISA. Moreover, ERISA's remedial scheme is "a specific and uniquely federal right or remedy, enforceable in

a federal court of equity, that c[an] be frustrated if the federal court were not empowered to enjoin a state court proceeding." *See Mitchum*, 407 U.S. at 237.

Exceptional federal statutes that, like ERISA, mandate exclusive federal jurisdiction have been found to "expressly authorize" injunctive relief.[12] The Emergency Price Control Act of 1942, 56 Stat. 24-26, 36-37 (expired 1947) was such a statute. Like ERISA, the Emergency Price Control Act implemented a complex and mixed jurisdictional scheme, in part permitting concurrent state and federal court jurisdiction, and in part providing for exclusive jurisdiction in the federal Emergency Court of Appeals. This Court, upon analyzing the jurisdictional scheme, held that the Emergency Price Control Act authorized federal injunctions within the meaning of the Anti-Injunction Act:

> Congress [] preempted jurisdiction in favor of the Emergency Court *to the exclusion of state courts*. The rule expressed in [the Anti-Injunction Act] which is designed to avoid collisions between state and federal authorities (*Toucey v. New York Life Ins. Co.*, [314 U.S. 118 (1941)]) thus does not come into play. The powers of the District Court under § 205(a) of the Act and § 24(1) of the Judicial Code are ample authority for that court to protect the exclusive federal jurisdiction which Congress intended.

Bowles v. Willingham, 321 U.S. 502, 510-11 (1944) (emphasis added) (footnote omitted). The Third Circuit's distinction of *Bowles* (i.e., *Bowles* "has no application" because it involved the Emergency Price Control Act, and not ERISA) is entirely unpersuasive. (*See* App. at 13a n.4.) The language of ERISA section 502(e)(1) is similar to the language of the Emergency Price Control Act,[13] and must likewise "expressly

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[12] The federal courts have had little opportunity to consider the application of the Anti-Injunction Act in the context of exclusive federal jurisdiction, since there are very few federal statutes that mandate exclusive federal jurisdiction. *See supra* pp. 10-11.

[13] Section 204(d) of the Emergency Price Control Act, like ERISA section 502(e)(1), employed the phrase "exclusive jurisdiction" to

authorize" injunctions of state court proceedings. Bankruptcy proceedings are another area where the federal courts have some degree of "exclusive" jurisdiction, *see* 28 U.S.C. § 1334; Benjamin Weintraub & Alan N. Resnick, *Bankruptcy Law Manual* ¶ 6.04[1], at 6-13 (1992), and the lower federal courts recognize their authority to enjoin state court proceedings that interfere with bankruptcy court jurisdiction. *See In re Johns-Manville Corp.*, 801 F.2d 60, 63-64 (2d Cir. 1986); *In re Chicago, Milwaukee, St. Paul and Pacific RR.*, 738 F.2d 209 (7th Cir. 1984).

The Third Circuit recognized that the Pennsylvania courts do not have jurisdiction to entertain the claims alleged by Respondents in *Nobers II*:

> [E]ven if *Nobers II* had been properly brought under ERISA, federal jurisdiction over the [Respondents'] claim would have been exclusive.

(App. at 11a) (citation omitted). However, the Third Circuit became sidetracked, noting that (App. at 16a-17a):

> The only Supreme Court case on [the express authorization exception] since *Mitchum* is *Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623 (1977), where the Court split three ways over whether section 16 of the Clayton Act, 15 U.S.C. § 26, "expressly authorized" injunctions against state court proceedings that themselves violated the antitrust laws.

Vendo is inconclusive as to whether injunctions are "expressly authorized" by the Clayton Act.[14] Regardless whether the Clayton Act does or does not "expressly authorize" injunctive relief, there is one very important difference between the Clayton Act and ERISA: the Clayton Act no-

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describe the jurisdiction of the federal courts (i.e., the federal Emergency Court of Appeals). *See Bowles*, 321 U.S. at 510 & n.5.

[14] *Vendo* held that the state court proceeding in question should not be enjoined. However, as the Third Circuit noted, (App. at 18a), "six Justices seemed to believe that the Clayton Act authorizes injunctions of some state court proceedings [].''

where expressly provides for exclusive federal jurisdiction;[15] ERISA expressly does. *Vendo* should in no way inhibit the federal courts from issuing injunctions to enforce ERISA's explicit requirement of exclusive federal jurisdiction. Instead of recognizing that ERISA's exclusive federal jurisdiction authorizes injunctive relief – as the Sixth and Second Circuits have done – the Third Circuit illogically tacked from *Vendo* to conclude otherwise.

Contrary to the view of the panel below, *United States Steel Corp. Plan for Employee Ins. Benefits v. Musisko*, 885 F.2d 1170 (3d Cir. 1989), *cert. denied*, 493 U.S. 1074 (1990), does not compel the conclusion that the Anti-Injunction Act bars an injunction here. *Musisko* involved a state court claim for benefits against an insurer-administrator of a plan, and therefore the state court had concurrent jurisdiction under section 502(a)(1)(B) and (e)(1). *See Taylor*, 481 U.S. 58. The state court in *Musisko* did have *jurisdiction*, even though it may have applied the wrong legal standards. Concurrent jurisdiction was central to the rationale that an injunction was not warranted, 885 F.2d at 1177:

> Indeed, the very act of delegating concurrent jurisdiction to the state courts for resolution of beneficiaries' claims [i.e., under ERISA section 502(a)(1)(B)] is evidence of Congress' satisfaction that state tribunals would fairly and completely adjudicate such cases. In contrast to the misgivings about state courts articulated in section 1983's legislative history, *see Mitchum*,[]the grant of jurisdiction to the state judiciaries to resolve ERISA claims represents a congressional vote of confidence.

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[15] Section 16 of the Clayton Act simply provides that injunctive relief is available, and that the statute may be enforced in the federal courts. Clayton Act section 16, 15 U.S.C. § 26. *Cf.* Clayton Act § 11(d), 15 U.S.C. § 21(d) (enforcement actions by federal agencies carry an exclusive right of appeal in the federal courts of appeal). Federal statutes that, like the Clayton Act, do not specify exclusive federal jurisdiction, permit concurrent state court enforcement. *Tafflin*, 493 U.S. 455 (Racketeer Influenced and Corrupt Organizations Act); *Yellow Freight*, 494 U.S. 820 (Title VII of the Civil Rights Act of 1964); *Gulf Offshore*, 453 U.S.C. 473 (Outer Continental Shelf Lands Act); *Dowd Box*, 368 U.S. 502 (section 301 of the Labor Management Relations Act).

The panel below failed to recognize that it is perfectly logical and consistent to deny injunctive relief in *Musisko* because of the state court's concurrent jurisdiction there, and to simultaneously provide injunctive relief here. Instead, the panel erroneously expanded *Musisko*.

The Third Circuit has mistakenly taken the extreme position that the Anti-Injunction Act bars all injunctive relief to enforce ERISA's preemption and jurisdictional scheme.[16] Injunctive relief may be unavailable or inappropriate in some cases; this is not one of them. As to "expressly authorized," the better conclusion – by far – is that the Anti-Injunction Act permits injunctive relief to enforce exclusive federal jurisdiction under ERISA, and prohibits injunctions for those actions in which ERISA allows the state courts to share concurrent jurisdiction with the federal courts.[17] This approach is simple and straightforward; it more than amply justifies injunctive relief in this case, and satisfies concerns for judicial comity, *see infra* pp. 19, 21-22. Otherwise, if the Anti-Injunction Act is construed to bar injunctions even in a case such as this one, what recourse is left to affected persons (such as Petitioner Plans) who are constrained by ERISA to seek adjudication of their rights and liabilities *only* in the federal courts?

The Third Circuit may have been influenced by a mistaken belief that Petitioners are unaffected by Respondents' state court litigation. (*See* App. at 20a.) This premise is false. The state court litigation purports to adjudicate rights to benefit eligibility in the guise of a trumped up employment dispute that is so patently a sham that the Third Circuit implored the state courts of Pennsylvania to – in effect – do

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[16] Conflicting decisions in other circuits are discussed *infra at* Part E.

[17] A third approach would make injunctive relief always available under the Anti-Injunction Act to enforce ERISA's preemption and jurisdictional scheme, but permit federal abstention, especially in cases where the state court has concurrent jurisdiction under ERISA section 502(a)(1)(B) and (e)(1). *See Mitchum*, 407 U.S. at 243 (although the Anti-Injunction Act does not bar injunctions to enforce 28 U.S.C. § 1983, abstention may be appropriate in some instances).

the right thing and dismiss the lawsuit.[18] The fact that Respondents' former employer (and its shareholder) are potentially liable in the state court for "damages" in lieu of "benefits" clearly does create a problem for the Plans.[19]

If Respondents prevail in *Nobers II*, that judgment would purport to shift the liability for benefits from the Plans to the Plan sponsors, a result abhorrent to ERISA. ERISA section 502(d)(2). Although the Plans provide for setoff of benefits as between the Salaried Plans and the Collective Bargaining Unit Plans, Respondents stand to obtain a "double" benefit (benefits plus damages), which the Salaried Plans cannot setoff because "damages" cannot be setoff under the terms of the Plans. Even if the state court adjusts a "damages" award to account for the Plans' setoff provisions, such a setoff could cause a transfer or use of plan assets by a party in interest, in violation of ERISA section 406(a)(1)(D) and section 4976 of the Internal Revenue Code – a potentially devastating consequence for both the Plans and their sponsors. The state court judgment would *de facto* impose a duplicative "shadow" plan on the employer, contrary to Congressional intent. *See McClendon*, 111 S. Ct. at 484. Furthermore, Respondents might later attempt to invoke collateral estoppel to assert a claim for benefits against the Collective Bargaining Unit Plans and thereby recover a "triple" benefit. More impor-

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[18] The plant that employed Respondents is closed. There is no possibility of continued employment. The sole issue is benefits. *See infra* Part G. As the Third Circuit recognized (App. at 11a): "even if *Nobers II* had been properly brought under ERISA, federal jurisdiction over the appellees' claim would have been exclusive."

[19] Petitioner Plans are creatures of federal law. They are freestanding entities under ERISA, much as corporations are freestanding entities under state corporation laws. But the Plans are created and funded by sponsoring employers, and cover employees at other locations. The relationship between an ERISA plan and its sponsor is complex and minutely regulated. Petitioner Plans – not Respondents' former employer (or its shareholder) – are the only entities with liability for benefits due under their terms. ERISA section 502(d)(2). Furthermore, ERISA protects the Plans from unauthorized state law expansion of their duties and liabilities. ERISA also protects plan sponsors from imposition of liability that rightly lies with the Plans. *See McClendon*, 111 S. Ct. at 484.

tantly, Respondents' deliberate forum shopping – if permitted – encourages the state courts to create independent phantom pension programs that would purportedly escape ERISA's framework.

This scenario of conflicting legal standards and liabilities is exactly what Congress wanted to eliminate. Congress sought uniformity and enacted ERISA to achieve that goal.

Petitioners, who are mindful that the state courts would be assessing "damages" based on the terms of the Plans, have a right to request declaratory judgment of the federal – and not the state – court.[20] If *Nobers II* were properly situated in federal court, Petitioner ERISA Plans would be authorized under ERISA to intervene in the federal court and obtain conclusive resolution of their rights and liabilities.[21] However, Petitioners are simply not empowered to intervene in the state court forum where *Nobers II* now lies. Petitioners are understandably unwilling to "intervene" in the state court, since Petitioners know full well that (1) the state court lacks jurisdiction, and (2) Petitioners cannot confer jurisdiction on the state court by consent, *see, e.g., International Longshoremen's Ass'n v. Davis*, 476 U.S. 380, 398-99 (1986).

If the state court litigation were of such a nature that the state court had jurisdiction to enter judgment (i.e., a claim under ERISA section 502(a)(1)(B) against the Plans similar to that alleged in *Musisko*), then there would be no potential for conflicting state and federal judgments – because the state court would be properly adjudicating a claim with the proper parties before it. But that is not the case here. The *Nobers II* claims, as alleged against Colt and Crucible, cannot

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[20] Injunctive relief should be available to enforce the declaratory judgment. *See Shaw*, 463 U.S. at 96 n.14 (injunctive relief is available to enjoin state officials from interfering with federal rights).

[21] One of the Petitioner Plans moved to intervene in *Nobers I*; the district court entered summary judgment before reaching the motion. Furthermore, the trustee of another of the Plans was named as a defendant in *Nobers I*.

be heard just as well in state as in federal court.[22] But if the state court acts without jurisdiction, and enters a judgment conflicting with the federal court judgment, which judgment prevails, and which judgment applies, for which persons? Certainly, such judicial clashes are far more injurious to judicial comity than federal injunctions issued at an earlier stage of the state court proceedings. *See infra* pp. 21-22. Concerns about judicial comity can most simply and effectively be addressed by recognizing that the Anti-Injunction Act permits injunctive relief *before* void judgments are entered.

The mandate of exclusive federal jurisdiction under ERISA – for most of the claims preempted by ERISA – is perfectly clear. If the Anti-Injunction Act exception for injunctions "expressly authorized by Act of Congress" means anything, it must certainly mean that injunctions are permitted to enforce the exclusive federal jurisdiction mandated by ERISA, and to enforce judgments (such as the declaratory judgment Petitioners have requested) rendered pursuant to the exclusive jurisdiction of the federal courts. The federal courts will undermine ERISA – and the stability it provides – if they are unwilling to issue injunctions to enforce ERISA's jurisdictional scheme.

C. Injunctive Relief Is "Necessary In Aid Of" The Exclusive Federal Jurisdiction Mandated By ERISA

The facts of this case make clear why injunctive relief is "necessary in aid of" exclusive federal jurisdiction under ERISA.[23] ERISA *in toto* (Titles I through IV) provides a

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[22] ERISA dictates that: (1) claims for benefits may be asserted in either state or federal court and *must be asserted against the applicable Plans*, but only after exhaustion of administrative remedies; whereas (2) claims against an employer or other third party (i.e., Crucible and Colt) for interference with rights to benefits entitlements *must be asserted in federal court* pursuant to ERISA section 510. *See McClendon*, 111 S. Ct. at 483.

[23] The difference between the "necessary in aid of jurisdiction" exception, and the "expressly authorized" exception, may be somewhat blurred in their application to statutes that confer some measure of exclusive federal jurisdiction. The Third Circuit's interpretation of this exception as "narrow and [] only in aid of a court's exclusive jurisdiction over a particular case" (App. at 13a) unnecessarily limits the plain meaning of the

singular comprehensive federal remedial scheme designed to address the rights and liabilities of all affected parties. If the lower courts attempt to allocate liabilities outside of that remedial scheme, then the balance carefully crafted by Congress is destroyed.

Petitioners have asked the district court to declare that Respondents are receiving all the benefits to which they are entitled under the Plans in which they are entitled to participate. Petitioners seek this declaratory judgment because Respondents have alleged *enforceable, remediable* rights that allegedly entitle Respondents to receive benefits under the terms of the Collective Bargaining Unit Plans, rather than the Salaried Plans. *See Bruch*, 489 U.S. at 112; *see also Winstead v. J.C. Penney Co.*, 933 F.2d 576 (7th Cir. 1991); Restatement (Second) of Trusts § 259 (1959). Petitioners' request is authorized by ERISA section 502(a)(3), and is itself subject to exclusive federal jurisdiction under section 502(e)(1) of ERISA – Petitioners are not authorized under ERISA to request the state courts to allocate liabilities among them. Surely, if the district court finds that Respondents are already receiving the correct benefits from the correct Plans, then the district court has authority to enjoin Respondents from invoking preempted contract law principles to reach a contradictory result. Such an injunction is "necessary in aid of" the exclusive federal jurisdiction mandated by ERISA.

The district court in *Nobers I* instructed Respondents to apply directly to the Collective Bargaining Unit Plans and exhaust administrative remedies. This instruction comports with the terms of the Plans and ERISA, which mandate that the Plans' administrators are to interpret the terms of the Plans. ERISA sections 402, 503; *see Bruch*, 489 U.S. 101.[24]

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statutory language. Because statutes requiring exclusive federal jurisdiction are so rare, the federal courts have had little opportunity to consider whether exclusive federal jurisdiction activates the second Anti-Injunction Act exception as well as the first. Petitioners propose that it does – i.e. the phrase "necessary in aid of its jurisdiction" encompasses "necessary in aid of *exclusive federal* jurisdiction."

[24] It is not immediately evident how benefits would be calculated in a situation where an employee is placed in a particular job status solely for the purpose of making that employee eligible for certain benefits.

Instead, Respondents reinstated litigation (*Nobers II*) in a different forum. Worse, the state court forum that Respondents have chosen lacks jurisdiction over the claims Respondents have alleged against Colt and Crucible. (App. at 11a.) Worse yet, the Pennsylvania courts appear wilfully oblivious to their lack of jurisdiction.

Petitioners have asked the district court to compel Respondents to apply to the Plans for the benefits they seek. If Respondents disagree with the administrative outcome, *then* they may bring suit *against the Plans* in state or federal court. This is not an optional choice; it is the procedure mandated by Congress – an integral part of ERISA's administrative scheme.[25] Surely, the district court may compel Respondents to exhaust administrative remedies in lieu of pursuing state court litigation.

The Third Circuit, although recognizing that Respondents are violating ERISA's express remedial and jurisdictional scheme, declined to provide injunctive relief, invoking judicial comity and citing *Atlantic Coast Line R.R. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281 (1970). (App. at 11a-15a.) The Third Circuit failed to recognize that the state courts did have jurisdiction in *Atlantic Coast Line*.[26] *Atlantic Coast Line* is thus unlike the present action. Here, the Pennsylvania courts completely lack jurisdiction. *See Capital Serv., Inc. v. NLRB*, 347 U.S. 501, 504-05 (1954) ("[W]here Congress [] has vested a federal agency with exclusive jurisdiction over a subject matter and the intrusion of a state would result in conflict of functions, the federal court may enjoin the state proceeding."); *see also Bowles v. Willingham*, 321 U.S. 502, 511 (1944). Concerns for judicial comity are inappli-

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[25] *See* Joint Explanatory Statement of the Committee of Conference, H.R. Rep. No. 1280, 93d Cong., 2nd Sess. 327, *reprinted in* 1974 U.S.C. C.A.N. 4639, 5107, *and in* 3 Legislative History, *supra*, at 4277, 4594; *see also Bruch*, 489 U.S. 101.

[26] *Atlantic Coast Line* followed from this Court's decision a year earlier in *Brotherhood of R.R. Trainmen v. Terminal Co.*, 394 U.S. 369 (1969), in which this Court observed that: "*[E]ven though the Florida courts may have jurisdiction over this litigation*, the application of state law is limited by paramount federal policies []." 394 U.S. at 382 (emphasis added).

cable to ERISA-preempted claims (such as the claims in *Nobers II*) that simply do not belong in state court. *See International Longshoremen's Ass'n v. Davis*, 476 U.S. 380, 398-99 (1986) ("[W]here state law is pre-empted by the NLRA under *Garmon* and our subsequent cases, the state courts lack the very power to adjudicate the claims that trigger pre-emption."); *Bowles*, 321 U.S. at 512 ("[T]he authority of Congress to withhold all jurisdiction from the state courts obviously includes the power to restrict the occasions when that jurisdiction may be invoked."). It is pointless to allow state courts to enter patently void judgments for the sake of misguided comity concerns;[27] such judgments must eventually be recognized as the nullities they truly are.[28] Comity cannot create jurisdiction where Congress withheld it. The Third Circuit's unwarranted and extreme stance on the scope of the Anti-Injunction Act can ultimately destroy ERISA's goal of uniform federal regulation.

D. Injunctive Relief Is Authorized To "Protect Or Effectuate" Prior And Prospective Judgments Of The District Court

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[27] It is a universal and basic principle that *any* court must dismiss any lawsuit at any time it appears that the court lacks subject matter jurisdiction. *See, e.g.*, Fed. R. Civ. P. 12(h)(3); *Cadillac Ins. Co. v. L.P.C. Distrib. Co.*, 770 S.W.2d 892, 895 (Tex. Ct. App. 1989) (citing *International Longshoreman's Ass'n v. Davis*, 476 U.S. 380 (1986)). This is true even if the court previously determined that it had jurisdiction, and regardless how far the litigation has progressed. Here, a federal court (instead of the state court itself) may be in the position of reversing the state court's previous decision regarding subject matter jurisdiction, in order to implement the unambiguous congressional intent behind ERISA. Although comity concerns may come to mind, they are misplaced. The federal courts *must* entertain ERISA cases and accordingly *must* entertain questions as to whether state court proceedings violate ERISA's mandate of exclusive federal jurisdiction. This duty flows naturally from this mandate.

[28] As one court observed in the bankruptcy context:

> [A] federal court does not have to give full faith and credit to a state court judgment if the state court did not have jurisdiction over the subject of the litigation or of the parties before it.

In re Brady, Texas, Municipal Gas Corp., 936 F.2d 212, 218 (5th Cir.) (citations omitted), *cert. denied sub nom. Sanders v. City of Brady, Tex.*, 112 S. Ct. 657 (1991).

The district court has ample authority under either of the first two exceptions to the Anti-Injunction Act to enjoin prosecution of *Nobers II*, based on the explicit provisions of ERISA. On the facts of this case, an injunction is also warranted under the third Anti-Injunction Act exception,[29] in order to "protect or effectuate" (1) the district court's judgment in *Nobers I*; or (2) the declaratory judgment that Petitioners have requested in this action.

The Third Circuit was unwilling "to reexamine" the application of this exception, in light of the holding in the previous action for injunctive relief brought by Colt and Crucible in *Colt Industries v. Nobers*, No. 85-563 (W.D. Pa. Aug. 12, 1985), *aff'd without opinion*, 787 F.2d 581 (3d Cir. 1986). (App. at 21a.) There, Colt and Crucible sought an injunction on the grounds that the claims alleged against them in the state court had already been (or should have been) adjudicated in *Nobers I*.

The Third Circuit missed the point when it demurred that Petitioners were not parties to *Nobers I*. The district court in *Nobers I* instructed Respondents to apply *to Petitioner Plans* for benefits. By instead bringing suit in state court, Respondents defy the district court's judgment, and also run afoul of the administrative mechanisms provided by the Plans pursuant to ERISA's remedial scheme.[30] Since the district court in *Nobers I* instructed Respondents to exhaust the administrative remedies provided by ERISA and the terms of the Petitioner ERISA Plans, the district court should now be able, under the third statutory exception to the Anti-Injunction Act, to enforce its previous judgment by ordering Respondents to desist from litigating *Nobers II*,[31] and comply

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[29] This exception is based upon traditional concepts of res judicata and collateral estoppel. *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 147 (1988); *Staffer v. Bouchard Transp. Co.*, 878 F.2d 638, 644 (2d Cir. 1989).

[30] The "protect or effectuate" exception thus relates to the "necessary in aid of jurisdiction" exception on the facts of this case.

[31] The main difference between *Nobers I* and *Nobers II* is the location of the judicial forum – one is state, and the other federal. *Nobers II* is *Nobers I* with a different label. *Nobers II* is unmistakably the same as *Nobers I* with respect to (1) the underlying facts alleged; (2) the relief sought; and

with the instruction they were given in *Nobers I* to apply to the Petitioner Plans for benefits.

Furthermore, the Third Circuit erred by prospectively denying injunctive relief to enforce the declaratory judgment that Petitioners have requested here. The district court has *exclusive* jurisdiction to provide guidance to Petitioners. The Third Circuit failed to recognize that, under the third statutory exception to the Anti-Injunction Act, the district court must be able to issue an injunction to "protect or effectuate" a declaratory judgment based on the questions Petitioners have presented to the district court. Otherwise, the declaratory judgment, which Petitioners have every right to request, *see Bruch*, 489 U.S. at 112, becomes no more than an advisory opinion.

E. There Is Conflict Among The Circuit Courts Regarding The Availability Of Injunctive Relief, And Confusion Regarding The Underlying Rationale

In *General Motors Corp. v. Buha*, 623 F.2d 455, 459 (6th Cir. 1980), the Sixth Circuit explicitly held that injunctive relief is available and "that ERISA meets both prongs of the *Mitchum* test." Similarly, in *Gilbert v. Burlington Indus.*, 765 F.2d 320 (2d Cir. 1985), *aff'd mem. sub nom. Roberts v. Burlington Indus.*, 477 U.S. 901 (1986), the Second Circuit affirmed the district court's injunction against a state administrative proceeding. The Second Circuit held that ERISA section 502(a)(3) "expressly authorizes" injunctions of state proceedings, 765 F.2d at 329; this Court summarily *affirmed*. *See also Senco of Fla., Inc. v. Clark*, 473 F. Supp. 902, 905 (M.D. Fla. 1979) (Congress intended ERISA to come within the "expressly authorized" exception); *Cartledge v. Miller*, 457 F. Supp. 1146, 1152 (S.D.N.Y. 1978) (ERISA's exclusive federal jurisdiction authorizes injunctions). Furthermore, the Department of Labor has sought and been granted injunctive

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even (3) the defendants against whom relief is sought (i.e., Colt and Crucible). There is precious little difference in the legal theories advanced in *Nobers II* and *Nobers I*, and indeed Respondents' claims in *Nobers II* were implicitly encompassed (or should have been explicitly alleged) in *Nobers I*.

relief against state proceedings. *See In re Consolidated Welfare Fund ERISA Litigation*, 15 Emp. Benefits Cas. 1352 (BNA) (S.D.N.Y. 1992).

The Third Circuit cited two Fifth Circuit opinions holding that injunctive relief is unavailable (1) under ERISA, *Total Plan Servs. v. Texas Retailers Ass'n*, 925 F.2d 142, 145 n.2 (5th Cir. 1991) and (2) under the Longshore and Harbor Workers Compensation Act, 33 U.S.C. §§ 901-950 ("LHWCA"), *Texas Ins. Ass'n v. Jackson*, 862 F.2d 491 (5th Cir. 1988), *cert. denied*, 490 U.S. 1035 (1989). (App. at 20a-21a n.8 & 12a-13a.) However, these cases rest on flawed reasoning.

The Third Circuit did not realize that the Fifth Circuit's opinion in *Jackson* has no bearing here, because the state court action in *Jackson* may not even have been preempted by federal law (i.e., the LHWCA), let alone subject to exclusive federal jurisdiction. The Fifth Circuit failed to realize that the LHWCA does not necessarily preempt all state law remedies. *See Peter v. Hess V.I. Corp.*, 903 F.2d 935 (3d Cir. 1990), *cert. denied*, 111 S. Ct. 783 (1991). Furthermore, the Fifth Circuit did not take into account that Congress may (1) preempt an area of law and yet permit the state courts to adjudicate claims under the federal statute, applying federal law, *see, e.g., Dowd Box*, 368 U.S. 502, or (2) preempt an area of law *and also* strip the state courts of jurisdiction, completely depriving the state judiciaries of any power to act under the area of law preempted by the statute, *see Davis*, 476 U.S. at 398-99; *see also Gorman v. Life Ins. Co. of N. Am.*, 811 S.W.2d 542, 545 (Tex.), *cert. denied*, 112 S. Ct. 88 (1991). The Fifth Circuit did not realize that the LHWCA belongs to the former category – not the latter.[32] ERISA, unlike the LHWCA, is largely the latter category.

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[32] The Fifth Circuit in *Jackson* also misinterpreted *Amalgamated Clothing Workers of Am. v. Richman Bros. Co.*, 348 U.S. 511 (1955). *Clothing Workers* held that the Taft-Hartley Act did not "expressly authorize" a *union* to obtain a federal injunction of a state court suit, because the Taft-Hartley Act authorized injunctions only on petition of the National Labor Relations Board ("NLRB"). *Id* at 516-17. The union, as a private litigant, could not obtain injunctive relief under the Taft-Hartley Act, *id.* at 519, but

The Fifth Circuit's opinion in *Total Plan Servs.* did involve ERISA. However, as in *Jackson*, the state court action in *Total Plan Servs.* may not even have been preempted by federal law.[33] As in *Jackson*, the Fifth Circuit glossed over the preemption question, glibly holding that injunctive relief is unavailable regardless of preemption. The Fifth Circuit ignored the fact that ERISA, unlike the LHWCA, explicitly deprives the state courts of jurisdiction to adjudicate most claims. Moreover, unlike the LHWCA, ERISA expressly authorizes federal lawsuits for injunctive relief to enforce ERISA and the terms of ERISA plans. ERISA, unlike the LHWCA, provides compelling authority to permit injunctions against state court proceedings in appropriate circumstances.

The Third Circuit focused on the outcomes of *Jackson* and *Total Plan Servs.*, and ignored the flaws in the underlying analyses. Furthermore, the Third Circuit did not recognize that the validity of *Total Plan Servs.* is uncertain in light of the Fifth Circuit's subsequent decision in *E-Systems, Inc. Hosp. Med. & Surgical Ins. Plan v. Pogue*, 929 F.2d 1100 (5th Cir.), *application for stay granted*, 112 S. Ct. 1 (Scalia, J.), *cert. denied*, 112 S. Ct. 585 (1991), holding that ERISA authorizes the federal courts to enjoin enforcement of a state tax indirectly imposed on plans, overriding the bar of the Tax Injunction Act.[34] If ERISA authorizes an injunction in the face of the Tax Injunction Act, then an injunction ought to be available under either or both of the first two exceptions to the Anti-Injunction Act. The Tax Injunction Act is of at least comparable - and perhaps broader - scope than the

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the district court could have enjoined the state proceedings on petition of the NLRB. *Id.* at 520.

[33] The state court lawsuit in *Total Plan Servs.* was an action for breach of contract by an employer association against an insurance company. Contracts between employers and service providers such as insurance companies generally escape ERISA preemption. *See Mackey v. Lanier Collection Agency & Serv.*, 486 U.S. 825, 833 (1988).

[34] "The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of the State." 28 U.S.C. § 1341.

Anti-Injunction Act. Furthermore, indirect state taxation is a less direct threat to ERISA's integrity than state law remedies directly paralleling remedies provided by ERISA.[35]

The confusion and conflict in the lower courts regarding the availability of injunctive relief can only worsen with time, because of the scarcity of authoritative guidance on the topic of exclusive federal jurisdiction. This Court can and should take this opportunity to articulate a standard that the lower federal courts can consistently apply.

F. This Court Has Already Indicated That Injunctive Relief May Be Available

This Court has already touched on equitable remedies and injunctive relief in *Shaw v. Delta Air Lines*, 463 U.S. 85 (1985). *Shaw* was a federal lawsuit by plan sponsors against a state official, seeking a declaratory judgment of ERISA's preemptive effect *and injunctive relief* against enforcement. 463 U.S. at 93 n.9 (noting that district court had granted injunction). Since state officials can be expected to resort to state judiciaries to enforce state laws, enjoining state officials from enforcement is the functional equivalent of enjoining state judicial proceedings.

This Court noted in *Shaw*, 463 U.S. at 96 n.14, that plan sponsors could request declaratory judgment and even obtain injunctive relief under general principles:

> A plaintiff who seeks injunctive relief from state regulation, on the ground that such regulation is pre-empted by a federal statute which, by virtue of the Supremacy Clause of the Constitution, must prevail, thus presents a federal question which the federal courts have jurisdiction under 28 U.S.C. § 1331 to resolve.

Petitioners here are authorized to seek injunctions and "other appropriate equitable relief" under section 502(a)(3)

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[35] The Third Circuit's opinion in *Rosa v. Resolution Trust Corp.*, 938 F.2d 383 (3d Cir.), *cert. denied*, 112 S. Ct. 582 (1991), adds to the confusion. *Rosa* directed the district court to vacate an injunction – not because injunctive relief is unavailable, but rather because the district court had attempted to enjoin acts specifically permitted by ERISA.

of ERISA.[36] If, as this Court recognized in *Shaw* (and implicitly reconfirmed by denying *certiorari* after granting a stay in *E-Systems*), injunctive relief against state court officials is available to enforce ERISA preemption, then certainly injunctive relief should be available against state judicial proceedings to enforce exclusive federal jurisdiction under ERISA.

G. This Case Provides A Uniquely Suitable Opportunity For This Court To Articulate Whether, And Under What Circumstances, Injunctive Relief Is Available To Enforce ERISA's Exclusive Federal Jurisdiction

Sooner or later, this Court will no doubt need to consider whether, and under what circumstances, injunctive relief is available to enforce ERISA's exclusive federal jurisdiction. This case provides a uniquely suitable opportunity to take up this issue, because the problem is clearly delineated on the facts of this case, and because this case is uncluttered by extraneous issues.

There may be cases where claims asserted in state court mix issues that are subject to ERISA preemption and exclusive federal jurisdiction with issues that are governed by other federal or state law that can be adjudicated in the state courts. This is not one of them. This case is uncluttered, for example, by employment law issues that the state courts retain jurisdiction to adjudicate. The plant where Respondents were employed is closed. There was no possibility of continued employment, nor have Respondents demanded relief flowing from rights to continued employment. The only question is, what benefits are Respondents entitled to receive, based on their historical service and status as of the time of the plant closing? Both Respondents and Petitioners

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[36] *Compare Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 25 (1982) (federal court does not have removal jurisdiction over state court action brought by state officials seeking a declaratory judgment regarding ERISA's preemptive effect, since, *inter alia*, state court officials are not authorized to seek such equitable relief under section 502(a) of ERISA) *with Shaw*, 463 U.S. at 96 n.14 (plan sponsors, unlike state officials, may seek declaratory judgment).

are focused on this same, singular question, albeit Respondents have chosen to seek resolution in a forum that lacks jurisdiction. This is as purely a benefits rights question as can be postulated.

The singular nature of Respondents' claims is no less true because the Superior Court of Pennsylvania failed to recognize it.[37] Despite the fact that Respondents' claims in *Nobers II* are clearly subject to exclusive federal jurisdiction, the Superior Court of Pennsylvania has directed the Court of Common Pleas to entertain the lawsuit. Despite the Third Circuit's hopeful suggestion that "[p]erhaps the Pennsylvania trial and intermediate appellate courts will now reconsider their holding" (App. at 14a), there is no mechanism readily enabling the Court of Common Pleas to reinstate its order dismissing *Nobers II*, nor any provision for mandatory review by the Superior Court.

Unfortunately, this is not an isolated aberration. There are other instances in which state courts have similarly attempted to exercise non-existent jurisdiction over ERISA preempted claims that belong in the federal courts. When this occurs, the state court usually purports to apply legal principles that have been preempted by ERISA. *See Lash v. Equibank*, 569 A.2d 1389 (Pa. Super. Ct. 1989), *aff'd*, 604 A.2d 1027 (Pa.), *petition for cert. filed*, No. 92-127, 61 U.S.L.W. 3061 (July 14, 1992) (directing trial court to exercise jurisdiction and apply state contract law to a claim that is plainly preempted by ERISA); *Morosetti v. Louisiana Land and Exploration Co.*, 564 A.2d 151 (Pa. 1989) (exercising jurisdiction and applying state contract law to an action that is plainly pre-

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[37] The Superior Court ignored this Court's teachings, and instead cited *Shaw v. Westinghouse Elec. Corp.*, 419 A.2d 175 (Pa. Super. Ct. 1980), about which it has been observed: "[T]he Supreme Court's decisions in *Pilot Life* and *[Metropolitan Life]* have foreclosed whatever support *Shaw* . . . might have lent to Straub's [non-preemption] argument." *Straub v. Western Union Tel. Co.*, 851 F.2d 1262, 1264 n.2 (10th Cir. 1988). All the relevant facts in *Shaw*, including plaintiff's termination of employment, occurred prior to the time that ERISA became effective. Plaintiff's claim in *Shaw* arose prior to the effective date of ERISA, and therefore he did have a claim under state law. Respondents here do not.

empted by ERISA). In some instances neither the litigants nor the court realize that ERISA preempts the lawsuit. In other cases, the lack of jurisdiction is called to the state court's attention to no avail.

This case illuminates the issues surrounding the availability of injunctive relief with exceptional clarity. All three exceptions to the Anti-Injunction Act are activated by the facts of this case – and the last exception is implicated in two ways (injunctive relief ought to be available to enforce the district court's judgment in *Nobers I*, as well as the declaratory judgment the district court may ultimately issue in this action). This case provides the ideal backdrop for this Court to consider the application of the Anti-Injunction Act to ERISA, and is therefore worthy of this Court's plenary consideration.

CONCLUSION

For all the reasons stated above, this petition for writ of *certiorari* should be granted.

Respectfully submitted,

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92-597

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No. A-

IN THE

Supreme Court of the United States

OCTOBER TERM 1992

THE 1975 SALARIED RETIREMENT PLAN
FOR ELIGIBLE EMPLOYEES
OF CRUCIBLE, INC., ET AL.,
Petitioners,

v.

DAVID A. NOBERS, ET AL.,
Respondents.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Filed July 6, 1992

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 91-3426

THE 1975 SALARIED RETIREMENT PLAN FOR ELIGIBLE EMPLOYEES OF CRUCIBLE, INC., an ERISA plan; THE COLT INDUSTRIES OPERATING CORPORATION SEVERANCE PLAN FOR SALARIED, NONUNION EMPLOYEES, an ERISA plan; THE RETIREMENT COMMITTEE OF COLTEC INDUSTRIES, INC., as administrator of The 1975 Salaried Retirement Plan for Eligible Employees of Crucible, Inc. and The Colt Industries Operating Corporation Severence Plan for Salaried, Nonunion Employees; THE PENSION PLAN FOR COLLECTIVELY BARGAINED EMPLOYEES OF MIDLAND OPERATIONS OF CRUCIBLE, INC., an ERISA plan; THE SUPPLEMENTAL UNEMPLOYMENT BENEFIT PLAN FOR COLLECTIVELY BARGAINED EMPLOYEES OF MIDLAND OPERATIONS OF CRUCIBLE, INC., an ERISA plan; THE SEVERANCE ALLOWANCE PLAN FOR THE COLLECTIVELY BARGAINED EMPLOYEES OF MIDLAND OPERATIONS OF CRUCIBLE, INC., an ERISA plan; and COLTEC INDUSTRIES, INC., as administrator of The Pension Plan for Collectively Bargained Employees of Midland Operations of Crucible, Inc., The Supplemental Unemployment Benefit Plan for Collectively Bargained Employees of

Midland Operations of Crucible, Inc., and The Severance Allowance Plan for the Collectively Bargained Employees of Midland Operations of Crucible, Inc.

Appellants

v.

DAVID A. NOBERS; ROBERT R. CAMPBELL, JR.; GASPER P. PORTO; and GARY T. WEEKLY

On Appeal from the United States District Court for the Western District of Pennsylvania (Dist. Ct. Civil No. 90-0080)

Argued December 13, 1991

Before: BECKER, GREENBERG, and ALITO, *Circuit Judges*

(Filed: July 6, 1992)

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OPINION OF THE COURT

BECKER, *Circuit Judge.*

This appeal requires us to construe the Anti-Injunction Act, 28 U.S.C. § 2283 (1988), in the context of the Employee Retirement and Income Security Act ("ERISA"), 29 U.S.C.A. §§ 1001-1462 (West 1985 & Supp. 1992). The plaintiff-appellants, five plans for the benefit of employees of Crucible, Inc., seek to enjoin the appellees, four employees whom Crucible laid off, from prosecuting a contract action against Crucible and its parent company, Colt Industries, Inc., in Pennsylvania state court. The district court for the Western District of Pennsylvania denied the requested injunction.

The plans allege that the state court suit will interfere with the performance of their duties under ERISA. Contending that the state court suit "relates to" ERISA plans because the state court will have to construe the plans in determining liability, the plans submit that, under sections 502(e)(1) and 514(a) of ERISA, 29 U.S.C. §§ 1132(e)(1), 1144(a) (1988), the state court action is preempted and the case is subject to exclusive federal jurisdiction.

Under the Anti-Injunction Act, a federal court may grant injunctions to stay state court proceedings only when "expressly authorized by an Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283 (1988). The plans assert that their claim falls under all three

exceptions. They contend that section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), "expressly authorize[s]" injunctions for violations of ERISA, including violations of its supersedure provisions. They also argue that an injunction is necessary in aid of the federal court's (exclusive) jurisdiction, and to protect the district court's judgment in favor of Crucible and Colt in an earlier suit by the employees.

Although we agree with the plans that the state court suit is preempted and that the claim, if brought under ERISA, would be subject to exclusive federal jurisdiction, we conclude that the plans' request falls under none of the three exceptions in the Anti-Injunction Act. We will therefore affirm the judgment of the district court denying the injunction.

I. FACTS AND PROCEDURAL HISTORY

The appellees claim to represent a class of former employees of Crucible's Midland, Pennsylvania steel plant who were promoted from positions in Crucible's collective bargaining unit into salaried, non-union positions. Around 1980, Crucible began to have economic troubles and instituted cutbacks and layoffs. During this period, some salaried employees were demoted back to union positions, but the putative class members were not demoted, and were eventually laid off in 1982 as salaried employees. The appellees contend that they had a contractual right to be demoted from managerial and supervisory positions back to the bargaining unit and that if they had been properly demoted, they would have received substantially greater pension and related benefits than those to which they are entitled as salaried

employees. Protracted litigation has followed their layoff.

The appellees first brought Civil Action No. 82-1846 in the district court for the Western District of Pennsylvania against Crucible, Colt, the steelworkers' union, and the administrator of the union's pension plans. The appellees claimed that the collective bargaining agreement required Crucible to demote them and lay them off as union employees rather than as salaried employees, and that the union breached its duty of fair representation by failing to file their grievance. This suit ("*Nobers I*") was a hybrid class action based on section 301 of the Labor-Management Relations Act ("LMRA"), 29 U.S.C. § 185 (1988). The district court certified the class pursuant to Federal Rule of Civil Procedure ("FRCP") 23, but granted summary judgment against the appellees (plaintiffs there) on the ground that they had neither an express nor an implied right under the collective bargaining agreement to be terminated as union employees.[1] This court affirmed without opinion. *Nobers I*, 722 F.2d 733 (3d Cir. 1983).

Not fazed by their loss in federal court, in 1984 the appellees brought Action No. 843-1984 in the Court of Common Pleas of Beaver County, Pennsylvania. This class action suit ("*Nobers II*"), which is still pending, asserts claims against Crucible and Colt for breach of and interference with alleged express and implied contracts of employment. The appellees allege a right to return

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1. The court also granted summary judgment on the plaintiffs' claim of general "violations and breaches of plaintiffs' rights." The court dismissed their ERISA claims for failure to join the proper defendants and to exhaust administrative remedies.

to the bargaining unit and to be terminated as union employees rather than as salaried employees. They seek damages equivalent to the unemployment, pension, and insurance benefits available to bargaining unit employees.

Crucible and Colt attempted to remove *Nobers II* to federal district court, but the district court remanded the case to state court on the grounds that neither diversity jurisdiction nor ancillary jurisdiction supported original federal jurisdiction. *Nobers v. Crucible, Inc.*, 602 F. Supp. 703 (W.D. Pa. 1985). After remand, Colt and Crucible took another tack to prevent the state court from acting on *Nobers II*: they brought Civil Action No. 85-563 in federal court, seeking to enjoin *Nobers II* on the ground that it was barred by the res judicata effect of *Nobers I*. The district court denied relief on the ground that the face of the *Nobers II* complaint made no strong and unequivocal showing of relitigation, as required by the case law under the Anti-Injunction Act, 28 U.S.C. § 2283. This court affirmed without opinion. *Colt Industries v. Nobers*, 787 F.2d 581 (3d Cir. 1986).

The Beaver County Court of Common Pleas resumed its proceedings in *Nobers II*, and in 1987 dismissed the action upon the motion of Colt and Crucible, holding that ERISA preempted the appellees' state law claims. On appeal, however, the Pennsylvania Superior Court reversed, *Nobers v. Crucible, Inc.*, 376 Pa. Super. 156, 545 A.2d 367 (1988), basing its ruling on *Shaw v. Westinghouse Electric Corp.*, 276 Pa. Super. 220, 419 A.2d 175 (1980), and finding the association between the *Nobers II* contractual allegations and the ERISA plans to be "tangential at best," 545 A.2d at 371.

The Pennsylvania Supreme Court denied review. 522 Pa. 578, 559 A.2d 39 (1989).

After the Pennsylvania Supreme Court ruling, Colt and Crucible returned to federal district court, seeking to remove *Nobers II* based on intervening United States Supreme Court decisions about the scope of ERISA preemption. The district court ruled, however, that this second attempt at removal was untimely. Colt and Crucible petitioned for mandamus from this court, but we denied the petition. *Crucible Inc. v. Zeigler*, No. 90-3049 (3d Cir. June 8, 1990). *Nobers II* is therefore still pending in state trial court.

Finally, the Crucible employee benefit *plans* (but not Crucible and Colt themselves) brought this action in federal district court under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), seeking declaratory guidance as to their obligations to the appellees. The district court had jurisdiction under ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1). In addition to a declaratory judgment, the plans seek to enjoin the defendant-appellees here (the plaintiffs in *Nobers II*) from further prosecuting *Nobers II* in state court. On May 30, 1991, the district court denied injunctive relief, but allowed discovery to proceed on the plans' requests for declaratory relief.

To ensure immediate appealability of the denial of injunctive relief, the plans requested that the district court enter a final judgment under FRCP 54(b) on that claim. On June 26, 1991, the district court did so. We therefore have jurisdiction over the plans' appeal under 28 U.S.C. § 1291. Our review is plenary. *Carey v. Pennsylvania Enterprises*, 876 F.2d 333, 337 (3d Cir. 1987).

II. AVAILABILITY OF AN INJUNCTION UNDER THE ANTI-INJUNCTION ACT

The plans request that we reverse the district court's judgment refusing to enjoin the appellees from prosecuting *Nobers II* in Pennsylvania court. Under the Anti-Injunction Act,

> [a] court of the United States may not grant an injunction to stay proceedings in a State court except [1] as expressly authorized by Act of Congress, or [2] where necessary in aid of its jurisdiction, or [3] to protect or effectuate its judgments.

28 U.S.C. § 2283. Although technically the plans seek only to enjoin the appellees and not the state court proceeding itself, the Anti-Injunction Act cannot be evaded by such a formality. See, for example, *Atlantic Coast Line Railroad v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 287, 90 S. Ct. 1739, 1743 (1970). Moreover, the three exceptions in the Anti-Injunction Act are exclusive: an injunction against *Nobers II* is proper only if it falls within one of them. See, for example, *Choo v. Exxon Corp.*, 486 U.S. 140, 146, 108 S. Ct. 1684, 1689 (1988); *Amalgamated Clothing Workers of America v. Richman Brothers*, 348 U.S. 511, 514-16, 75 S. Ct. 452, 454-55 (1955). We take up the the exceptions in the order pressed by the plans.

A. *"Necessary in Aid of Its Jurisdiction"*

The plans contend that the subject matter of *Nobers II* is, under ERISA section 502(e)(1), 29 U.S.C. § 1132(e)(1), subject to exclusive federal jurisdiction, and therefore the requested injunction

falls under the second exception to the Anti-Injunction Act because it is necessary in aid of the district court's (exclusive) jurisdiction over claims of this sort. We must first determine whether federal courts have exclusive jurisdiction over the claims in *Nobers II*; if so, we must then determine whether, as the plans claim, that is sufficient to invoke the "necessary in aid of its jurisdiction" exception.

1. *Preemption and Exclusive Federal Jurisdiction*

The plans contend that *Nobers II*, although nominally a contract action against Colt and Crucible, "relates to," and implicates construction of, an ERISA plan. Section 514(a) of ERISA provides (with exceptions not relevant here) that subchapters II and III of ERISA (covering, among other things, jurisdiction, administration, enforcement, and plan termination insurance) "shall supersede any and all State laws insofar as they may now or hereafter relate to any [ERISA-covered] employee benefit plan . . . ." 29 U.S.C. § 1144(a) (1988). Therefore, if *Nobers II* "relates to" an ERISA plan, it is preempted even if it states an otherwise valid state law claim.

In determining whether *Nobers II* "relates to" an ERISA plan, we are guided by the Supreme Court's recent decision in *Ingersoll-Rand Corp. v. McClendon*, 111 S. Ct. 478 (1990), which reaffirmed the Court's expansive definition of "relationship to" ERISA plans, and therefore also confirmed the broad scope of ERISA preemption established in earlier cases such as *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41, 107 S. Ct. 549 (1987), and *Metropolitan Life Insurance Co. v. Taylor*, 481 U.S. 58, 107 S. Ct. 1542 (1987). In

Ingersoll-Rand, the plaintiff filed a wrongful discharge action based on state law tort and contract theories, alleging that his employer terminated him out of a desire to avoid contributing to the pension fund. The Supreme Court unanimously held that the action was preempted.

Six Justices concluded that because the existence of an ERISA plan was a critical factor in establishing liability, and because the trial court's inquiry would be directed to the plan, the suit "related to" an ERISA plan, and hence was preempted. Id. at 433. In short, if there were no plan, there would have been no cause of action. Moreover, all nine Justices agreed on the narrower ground that the suit was preempted because it conflicted directly with an ERISA cause of action. The Court observed that section 510 of ERISA, 29 U.S.C. § 1140 (1988), creates a cause of action for interfering with the attainment of a right under an ERISA plan, and the plaintiff could and should have sued on that federal cause of action. 111 S. Ct. at 485.

Ingersoll-Rand controls the preemption question in this case. The plans are certainly correct that the claim in *Nobers II* depends on the existence of an ERISA plan. If an ERISA plan did not exist, the appellees would never have brought *Nobers II*. Furthermore, the trial court's inquiry in *Nobers II* would be directed to ERISA plans, in that the calculation of damages would involve construction of ERISA plans, even though Colt and Crucible, not the plans themselves, would not be liable for the damages. The appellees place great emphasis on the fact that *Nobers II* is a suit against an employer, not ERISA plans or their administrators.

But that defense is unavailing after *Ingersoll-Rand*, which concluded that ERISA preempted a suit against an employer.[2]

In sum, *Nobers II* "relates to" an ERISA plan and is accordingly preempted by ERISA section 514(a), 29 U.S.C. § 1144(a).[3] Moreover, although actions under section 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B), to recover benefits due under a plan, to enforce rights under a plan, or to clarify rights to future benefits under a plan, are subject to concurrent state and federal jurisdiction, see ERISA section 502(e)(1), 29 U.S.C. § 1132(e)(1), *Nobers II* is not such an action. As a result, even if *Nobers II* had been properly brought under ERISA, federal jurisdiction over the appellees' claim would have been exclusive. Id.

2. *Availability of an Injunction*

According to the plans, the district court should have granted an injunction to protect its exclusive

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2. The appellees also rely on *Fort Halifax Packing Co. v. Coyne*, 481 U.S. 1, 107 S. Ct. 2211 (1987), but that case is easily distinguished. There the Supreme Court held that ERISA did not preempt a Maine severance pay statute because it did not "relate to" employee benefit *plans* (as opposed to employee benefits in general). To be preempted, held the Court, a statute must have some connection to an ERISA plan, and the Maine statute did not establish or require an employer to maintain a plan, nor did it threaten the underlying purposes of ERISA. Here, in contrast, a plan most certainly exists, and the appellees measure their damages in *Nobers II* by reference to that plan.

3. Because of this conclusion, we need not also decide whether *Nobers II* is preempted under the alternative rationale in *Ingersoll-Rand* – that ERISA section 510, 29 U.S.C. § 1140, provides the plaintiffs a cause of action that directly conflicts with the state law claims asserted in the state court suit.

jurisdiction over this general subject matter. The Supreme Court, however, has repeatedly held that federal preemption, or even a statutory grant of exclusive federal jurisdiction, does not, by itself, provide federal courts with the power to enjoin illegal state proceedings. In *Choo*, for example, the Supreme Court reiterated its earlier holding that

> a federal court does not have inherent power to ignore the limitations of [28 U.S.C.] § 2283 and to enjoin state proceedings merely because those proceedings interfere with a protected federal right or invade an area pre-empted by federal law, even when the interference is unmistakably clear.

486 U.S. at 149, 108 S. Ct. at 1691 (1988) (quoting *Atlantic Coast Line*, 398 U.S. at 294, 90 S. Ct. at 1747).

In *Amalgamated Clothing Workers*, the Court rejected outright the position pressed by the plans here, when it ruled that the Anti-Injunction Act "does not apply whenever the moving party in the District Court alleges that the state court is 'wholly without jurisdiction over the subject matter, having invaded a field pre-empted by Congress.'" 348 U.S. at 515, 75 S. Ct. at 455.[4] See also *Texas*

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4. The plans rely on *Capital Service, Inc. v. NLRB*, 347 U.S. 501, 74 S. Ct. 699 (1954), but in that case the Supreme Court held that a federal injunction against enforcement of a state court order was necessary in aid of the district court's jurisdiction over the particular case before it (an action by the NLRB to enjoin picketing pending the adjudication of an unfair labor practice complaint). In dictum, the Court stated that "where Congress, acting within its constitutional authority, has vested a federal agency with exclusive jurisdiction over a subject matter and the intrusion of a state would result in the conflict of functions, the federal court may enjoin the state

Employers' Insurance Association v. Jackson, 862 F.2d 491, 498-99 (5th Cir. 1988) (en banc). In essence, the "necessary in aid of its jurisdiction" exception is narrow and applies only in aid of a court's exclusive jurisdiction over a particular case, not over a general class of cases. Accordingly, the typical application of this exception has been in removal cases (where a district court must ensure its exclusive governance of the particular litigation removed)[5] and in *in rem* cases (where, under the traditional view, only one court can entertain jurisdiction over a particular

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proceeding." Id. at 504, 74 S. Ct. at 702. That discussion was preceded, however, with the qualification "[i]n absence of a command of the Congress to the contrary," and was followed with a mention of just such a command, the Anti-Injunction Act.

The plans also cite *Bowles v. Willingham*, 321 U.S. 503, 64 S. Ct. 641 (1944), which involved the predecessor of section 2283, but we believe that *Bowles* rested on the Court's interpretation of section 205 of the Price Control Act as creating an exception to the predecessor of section 2283. See *Porter v. Dicken*, 328 U.S. 252, 255 & n.1, 66 S. Ct. 1094, 1096 & n.1 (1946). *Bowles* therefore has no application here.

Finally, the plans cite and essentially rely on the reasoning of Chief Justice Warren in his dissent in *Amalgamated Clothing*, which recited the legislative history behind the Anti-Injunction Act and the case law under its predecessor, including *Bowles*. Suffice it to say that we cannot follow the dissenting views of three Justices when a majority of the Court rejected them not only then, but consistently in succeeding cases.

5. The removal cases may also fall under the "expressly authorized" exception, because 28 U.S.C. § 1446(e) (1988) provides that upon removal the "State court shall proceed no further unless and until the case is remanded." See *Mitchum v. Foster*, 407 U.S. 225, 234-37, 92 S. Ct. 2151, 2158-59 (1972).

physical *res*). See Erwin Chemerinsky, *Federal Jurisdiction* § 11.2.3 at 563-65 (Little, Brown, 1989). See also *Jennings v. Boenning & Co.*, 482 F.2d 1128, 1131-35 (3d Cir. 1973).

Under this exception to the Anti-Injunction Act, then, the plans must show that an injunction of *Nobers II* is necessary in aid of the district court's jurisdiction over the very case before it: the plans' declaratory judgment action. In *Atlantic Coast Line*, the Court emphasized the word "necessary," and held that for the exception to apply, a state court case must "so interfer[e] with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility to decide that case." 398 U.S. at 295, 90 S. Ct. at 1747. In this case, *Nobers II* does not purport to determine the plans' obligations. The plans are not even parties to *Nobers II*, so we find no reason to conclude that an injunction of *Nobers II* is necessary for the district court in aid of its jurisdiction over this case.

In sum, the Pennsylvania court's assumption of jurisdiction over *Nobers II* is in violation of ERISA's supersedure provisions, but an injunction does not lie simply because of that fact. Instead, we must assume that the state courts will faithfully follow federal law. On that score, we note that the preemption issue here was not definitively resolved until *Ingersoll-Rand*, which was decided *after* the Pennsylvania Superior Court had ruled that *Nobers II* was not preempted. Perhaps the Pennsylvania trial and intermediate appellate courts will now reconsider their holding. If not, then the proper avenue of redress is appeal through the state court system, and ultimately, if necessary, to the United

States Supreme Court. See *Atlantic Coast Line*, 398 U.S. at 287, 90 S. Ct. at 1743.

B. *"Expressly Authorized by Act of Congress"*

A federal court may enjoin a state proceeding if "expressly authorized by Act of Congress." 28 U.S.C. § 2283 (1988). That wording is deceptively simple, however. The Supreme Court has emphasized that the injunction-authorizing statute need not expressly refer to the Anti-Injunction Act. *Amalgamated Clothing Workers*, 348 U.S. at 516, 75 S. Ct. at 455 ("no prescribed formula is required; an authorization need not expressly refer to § 2283"). Moreover, the Court has also unanimously held that "a federal law need not expressly authorize an injunction of a state court proceeding in order to qualify" under the "expressly authorized" exception. *Mitchum v. Foster*, 407 U.S. 225, 237, 92 S. Ct. 2151, 2159 (1972).[6] Instead, the test is more complex:

> [I]t is clear that, in order to qualify as an "expressly authorized" exception to the anti-injunction statute, an Act of Congress must have created a specific and uniquely federal right or remedy, that could be frustrated if the federal court were not empowered to enjoin a state

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6. In *Mitchum*, all seven Justices taking part joined Justice Stewart's opinion of the Court. Justices Powell and Rehnquist took no part in the case. Chief Justice Burger and Justices White and Blackmun concurred to emphasize that even when the Anti-Injunction Act does not bar an injunction against a state court proceeding, principles of equity, comity, and federalism may independently weigh against an injunction, as in *Younger v. Harris*, 401 U.S. 37, 91 S. Ct. 746 (1971), and its progeny.

> proceeding. This is not to say that in order to come within the exception an Act of Congress must, on its face and in every one of its provisions, be totally incompatible with the prohibition of the anti-injunction statute. The test, rather, is *whether an Act of Congress, clearly creating a federal right or remedy enforceable in a federal court of equity, could be given its intended scope only by the stay of a state court proceeding.*

Id. at 237-38, 92 S. Ct. 2159-60 (emphasis added; footnote and citations omitted).

In *Mitchum* itself, the Supreme Court had no trouble concluding that 42 U.S.C. § 1983 was an "expressly authorized" exception allowing injunctions of state courts, even though the statute on its face merely authorized suits in equity without specifying state courts as the subjects. The Court detailed the legislative history of section 1983, and found that the Civil Rights Act of 1871 was clearly intended to enforce the Fourteenth Amendment against state action, including judicial action. 407 U.S. at 238-43, 92 S. Ct. at 2156-60. The *Mitchum* test, however, has proven more difficult to apply to other statutes that also authorize injunctions in general (not specifically against state proceedings), but whose legislative intent regarding injunctions of state courts is less clear.

The only Supreme Court case on this point since *Mitchum* is *Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623, 97 S. Ct. 2881 (1977), where the Court split three ways over whether section 16 of the Clayton Act, 15 U.S.C. § 26, "expressly authorized" injunctions against state court proceedings that

themselves violate the antitrust laws. The lead opinion by Justice Rehnquist, joined by Justices Stewart and Powell, concluded that although an antitrust action is a uniquely federal right or remedy, the Clayton Act could be given its intended scope without staying the state court proceeding. Distinguishing *Mitchum* by noting the lack of clear legislative history regarding the Clayton Act, id. at 633-35, 97 S. Ct. at 2888-89, and fearing that a broad reading would mean that all federal statutes authorizing general injunctions would be exceptions to the Anti-Injunction Act, id. at 635-39, 97 S. Ct. at 2889-91, Justice Rehnquist insisted that "the Act countenancing the federal injunction must necessarily interact with, or focus upon, a state judicial proceeding." Id. at 640-41, 97 S. Ct. at 2892.

That view, however, did not command a majority of the Court.[7] Justice Stevens, dissenting with Justices Brennan, White, and Marshall, believed that where the state proceedings were themselves an antitrust violation, they could be enjoined because only in that way could the antitrust laws be given their full scope. Id. at 656-58, 97 S. Ct. at 2900-01. Justice Blackmun, joined by Chief

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7. Justice Rehnquist's opinion is frequently referred to as the plurality opinion, but that is not technically correct. His opinion garnered three votes, and two Justices concurred in the result while disagreeing almost entirely with Justice Rehnquist's rationale. In fact, as we shall explain, the views of the two concurring Justices on the Anti-Injunction Act (as opposed to the underlying question of antitrust law) were closer to those of the four dissenting Justices. Justice Rehnquist's views were therefore only a plurality of the majority, not of the whole Court. We therefore refer to it as the lead opinion.

Justice Burger, appeared to agree with the dissenters on that point (the concurrence is somewhat ambiguous), but disagreed with them on the underlying issue of antitrust law. Because the concurring Justices believed that the state proceedings were not a pattern of baseless, repetitive claims, they agreed with Justice Rehnquist's conclusion that section 16 did not authorize the injunction given in that particular case. Id. at 643-45, 97 S. Ct. at 2893-94. Thus although six Justices seemed to believe that the Clayton Act authorizes injunctions of some state court proceedings, a majority held that no injunction was proper on those facts.

In this case, the plans contend that section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3) (1988), "expressly authorizes" injunctions of state courts violating section 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1), the exclusive jurisdiction provision of ERISA discussed above. Section 502(a)(3) of ERISA provides that a participant, beneficiary, or fiduciary may bring an action

> (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan[.]

29 U.S.C. § 1132(a)(3). The plans argue that because *Nobers II* violates the exclusive jurisdiction provision in subsection (e)(1) of that same section, subsection (a)(3) authorizes an injunction against *Nobers II*.[8]

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8. As an initial matter, the Fifth Circuit has questioned

We do not write on a clean slate on this subject. In *United States Steel Corp. Plan for Employees Insurance Benefits v. Musisko*, 885 F.2d 1170 (3d Cir. 1989), this court held that ERISA contained no "express authorization" of an injunction of preempted state proceedings. We noted that nothing in the language of ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), suggests that Congress intended that injunctions be granted against state tribunals exceeding their jurisdiction. We further searched the legislative history for such an indication and found none. Id. at 1177.

The plans suggest that *Musisko* is distinguishable because there the underlying state law claim was by a beneficiary to recover benefits from a plan, and under section 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1), federal jurisdiction over such claims (if brought under ERISA[9]) is not exclusive, but concurrent with state courts'. Such a distinction of *Musisko* would be disingenuous. In *Musisko*, we did mention that state courts have concurrent jurisdiction over some ERISA claims, 885 F.2d at 1177, but our purpose there was to distinguish *Mitchum* and point out that Congress had no overarching distrust that state courts would disregard ERISA, unlike Congress's concerns about state court violations of section

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whether a state court suit truly "violates" 29 U.S.C. § 1132(e)(1), as the verb is used in 29 U.S.C. § 1132(a)(3). See *Total Plan Services v. Texas Retailers Association*, 925 F.2d 142, 144 (5th Cir. 1991). We will assume, however, that *Nobers II* "violates" the supersedure and exclusive jurisdiction provisions of ERISA.

9. The preemption and supersedure provision of ERISA section 514(a), 29 U.S.C. § 1144(a), still applies.

1983. The fact of concurrent jurisdiction in that particular case was irrelevant to the decision, as is the fact of exclusive jurisdiction in this case. See also *Total Plan Services v. Texas Retailers Association*, 925 F.2d 142, 145 n.2 (5th Cir. 1991) (following *Musisko* and rejecting arguments identical to those raised by the plans here).

At all events, even if *Musisko* were not binding precedent, we would conclude, under the standard in *Mitchum*, that ERISA can be given its intended scope without enjoining suits such as *Nobers II*. Although Congress established exclusive federal jurisdiction over some ERISA claims, the plans offer no evidence that Congress so distrusted state courts that it expected that state courts would fail to comply in good faith with the supersedure and exclusive jurisdiction provisions of ERISA. Moreover, although at least four and perhaps six Justices in *Vendo* may have concluded that in order to fully enforce the Clayton Act, federal courts needed to be able to restrain *substantive* violations of that Act (including repetitive, harassing state court lawsuits), *Nobers II* does not force the plans to violate *substantive* ERISA law. Even if *Nobers II* goes to trial and the appellees prevail, Colt and Crucible, not the plans, will pay the judgment. No assets of the plans will be transferred, and *Nobers II* will have no binding effect on the plans, so it will not prevent them from complying with ERISA.

The plans ask us to follow *General Motors Corp. v. Buha*, 623 F.2d 455 (6th Cir. 1980), which held that ERISA expressly authorized an injunction against a state court writ garnishing ERISA benefits. In *Musisko*, we expressed reservations about *Buha*, but felt it distinguishable. The Fifth

Circuit in *Total Plan Services* went even futher and rejected *Buha* outright. We reaffirm our conclusion in *Mustsko* that *Buha* is questionable but distinguishable. Whereas in *Buha* the Sixth Circuit concluded that the state writ would have made it impossible for the plan fiduciary there to carry out its duties under ERISA, we see no reason why the appellees' success in *Nobers II* will make it impossible for these plans to comply with ERISA.

In sum, we hold that section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), does not "expressly authorize" injunctions of state court actions simply because they are preempted by ERISA, even if the state court claims are subject to exclusive federal jurisdiction.

C. *"To Protect or Effectuate Its Judgments"*

Finally, the plans contend that an injunction is necessary to protect and effectuate the district court's judgment in *Nobers I*, which, among other things, rejected the appellees' LMRA claims and dismissed their ERISA claims for failure to join proper parties and to exhaust administrative remedies. The plans, however, were not parties in *Nobers I*, and they have not explained why they have standing to seek such an injunction under this res-judicata-based exception to the Anti-Injunction Act. At all events, Colt and Crucible, which were parties to *Nobers I*, sought an injunction on precisely this ground in 1985. The district court denied the injunction, and this court affirmed. *Colt Industries v. Nobers*, No. 85-563 (W.D. Pa. Aug. 12, 1985), aff'd, 787 F.2d 581 (3d Cir. 1986). We see no basis to reexamine that question now, when the same claim has been brought in a different guise.

III. CONCLUSION

Although ERISA preempts the appellees' state-law claims in *Nobers II*, the appellant plans are not entitled to an injunction against *Nobers II* because none of the three exceptions to the Anti-Injunction Act applies. The judgment of the district court will therefore be affirmed.

A True Copy:
Teste:

Clerk of the United States Court of Appeals
for the Third Circuit

IN THE
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

THE 1975 SALARIED RETIREMENT PLAN, et al.,
Plaintiffs,
v.
DAVID A. Nobers, et al.,
Defendants.

Civil Action 90-80

ORDER OF COURT

AND NOW, this 26th day of June 1991,

IT IS ORDERED that judgment be and hereby is entered on behalf of defendants and against plaintiffs with respect to all equitable claims of plaintiffs for the reasons set forth in the order of May 30, 1991.

/s/ DONALD E. ZIEGLER
Donald E. Ziegler
United States District Judge

cc: Counsel of record.

IN THE
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

THE 1975 SALARIED RETIREMENT PLAN, et al.,
Plaintiffs,
v.
DAVID A. NOBERS, et al.,
Defendants.

Civil Action 90-80

ORDER OF COURT

AND NOW, this 30th day of May 1991, after consideration of the submissions of the parties, the court finds as follows:

1. Plaintiffs filed an amended complaint in which they seek declaratory and equitable relief. Specially, in Counts II, III, VI and VII, plaintiffs seek to enjoin ongoing state court proceedings in the Court of Common Pleas of Beaver County, Pennsylvania.

2. Plaintiffs have failed to establish irreparable harm from the ongoing state court proceedings because any relevant defenses can and should be raised within the context of the breach of employment contract claims of defendants' grounded on state law.

3. Plaintiffs have failed to establish likely success on the merits with respect to the defenses based on federal law because these arguments have been considered and rejected by this court and the Court of Appeals.

4. Plaintiffs are not likely to succeed on the merits of their claims of preemption.

5. Defendants' proposed findings of fact and conclusions of law are adopted as the findings and conclusions of the court because they accurately reflect the posture of the litigation, the conclusions of this and other courts, the impact of this litigation on defendants' claims in state court, and the

adequacy of a remedy of law to plaintiffs in the state court proceedings.

6. Plaintiffs' claims for equitable relief will be denied.

7. Plaintiffs' request for an extended period of discovery with regard to their claims for declaratory relief will be granted.

IT IS THEREFORE ORDERED that plaintiffs' claims and request for equitable relief be and hereby are denied because plaintiffs have failed to meet the test for equitable relief by a preponderance of the evidence.

IT IS FURTHER ORDERED that plaintiffs' request for 60 days of discovery relevant to the claims for declaratory relief be and hereby is granted.

/s/ DONALD E. ZIEGLER

Donald E. Ziegler
United States District Judge

cc: Counsel of record.

IN THE
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

DAVID A. NOBERS, ROBERT R. CAMPBELL, JR., GASPAR P. PORTO, GARY T. WEEKLEY, individually and on behalf of themselves and all others similarly situated,
Plaintiffs,

v.

CRUCIBLE INC., a corporation, COLT INDUSTRIES, INC., a corporation, UNITED STEELWORKERS OF AMERICA, INTERNATIONAL UNION, an unincorporated association, UNITED STEELWORKERS OF AMERICA, LOCAL UNION 1212, an unincorporated association, UNITED STEELWORKERS OF AMERICA, LOCAL UNION 3177, an unincorporated association, UNITED STEELWORKERS OF AMERICA, LOCAL UNION 5047, an unincorporated association, and MELLON BANK, N.A., a corporation,
Defendants.

Civil Action 82-1846

ORDER OF COURT

AND NOW, this 10th day of December, 1982,

IT IS ORDERED that the motion of plaintiffs for leave to file an amended complaint be and hereby is granted.

IT IS FURTHER ORDERED that the above civil action be and hereby is certified as a class action pursuant to Rule 23(a) and (b)(1) and (2) of the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that the class be and hereby is composed of all non-union, salaried, supervisors or managers who were former members on one of the bargaining units represented by Local Unions 1212, 3177 and 5047, and United Steelworkers of America, International Union, at the Midland Plant of defendants, Crucible, Inc. and Colt Industries, Inc.

IT IS FURTHER ORDERED that the motions of defendants for summary judgment be and hereby are granted with respect to Counts 1, 2, 3 and 5 of the original complaint, and Counts 1, 2, 3, 5 and 6 of the amended complaint.

IT IS FURTHER ORDERED that the motions of defendants to dismiss Count 4 of the original complaint and amended complaints be and hereby are granted.

/s/ DONALD E. ZIEGLER

Donald E. Ziegler
United States District Judge

cc: Thomas H. M. Hough, Esq.
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IN THE
SUPREME COURT OF THE UNITED STATES FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

DAVID A. NOBERS, et al.,
Plaintiffs,
v.
CRUCIBLE INC., et al.,
Defendants.

Civil Action
No. 82-1846

Transcript of hearing on Motion to Dismiss at Pittsburgh, Pennsylvania, on Friday, December 11, 1982.

BEFORE: DONALD E. ZIEGLER, United States District Judge.

APPEARANCES:

THOMAS H.M. HOUGH and GREGORY GLEASON, 1200 Lawyers Building, Pittsburgh, Pennsylvania 15219, appearing in behalf of the Plaintiffs.

WILLIAM H. POWDERLY, III and PHILIP A. MISCIMARRA, Reed, Smith, Shaw and McClay, 747 Union Trust Building, Pittsburgh, Pennsylvania 15219, appearing in behalf of Defendants Crucible Inc. and Colt Industries, Inc.

PAUL WHITEHEAD, United Steelworkers of America, Five Gateway Center, Pittsburgh, Pennsylvania 15222, appearing in behalf of the Defendant United Steelworkers of America.

MR. WHITEHEAD: No, Your Honor.

THE COURT: All right. We will take a ten minute recess.

(Recess taken.)

THE COURT: All right. The following shall constitute findings of facts and conclusions of law.

No. 1. Plaintiffs are all non-union individual employees of Defendant Crucible Inc., who were formerly employed as

supervisors or managers at a plant operated by Defendant at Midland, Pennsylvania. Crucible is a subsidiary of Defendant Colt Industries, Inc. On or about October 15, 1982, the plant was permanently closed due to unfavorable economic conditions, reduced product demand and foreign competition.

No. 2. Crucible is a party to three collective bargaining agreements with Defendant United Steel Workers of America International Union. Each collective bargaining agreement involves a distinct local union representing different types of employment at the Midland facility. Local Union 1212 is a party to the basic agreement covering the production and maintenance employees. Local Union 5047 is a party to the melted products agreement covering hourly paid employees in the production, maintenance and research section of the melted products department. Local Union 3177 is a party to the clerical agreement covering office workers of both a clerical and technical nature.

No. 3. Crucible and the Local union Defendants have entered into a pension agreement with [sic] provides benefits for the employees covered by the three collective bargaining agreements. Defendant Mellon Bank is the trustee of this pension plan.

No. 4. On September 3, 1982, Plaintiffs filed this civil action on their own behalf and on behalf of a class consisting of non-union salaried supervisory and managerial employees of Crucible who had been employed at one time in one of the units covered by one of the collective bargaining agreements and represented by the Defendant Locals 1212, 3177 and 5047.

No. 5. Plaintiffs allege that historically when supervisory and managerial employees were laid off, Crucible returned the employees to the appropriate bargaining unit from which they were promoted. As a result, Plaintiffs assert that they are now entitled to return to their former bargaining units as of the date of their most recent layoffs which occurred prior to the closing of the plant. The company has refused to return these persons to their various bargaining units. This determination to lay off rather than demote has the effect of denying these employees various benefits under the collective bar-

gaining agreement and the pension agreement. Additionally, the refusal of Locals 1213, 3177 and 5047 to process grievances on behalf of the supervisors and managers allegedly constitutes a breach of their duty of fair representation.

No. 6. Crucible, Colt and the Union Defendants contend that Plaintiffs are explicitly excluded from the collective bargaining agreements since the agreements do not apply to supervisory or managerial employees. Additionally, Defendants contend that Plaintiffs have no vested right to return to the bargaining unit as a result of the previous acts of the company. These previous decisions according to the Defendant, were discretionary acts by Crucible and thus no vested rights were established. Accordingly, the company has no duty to return Plaintiffs to the bargaining unit, and the Union Defendants owe no duty of fair representation according to the defense. Finally, Defendants Crucible and Colt aver that even if some right was created by these previous decisions, the instant situation is distinguishable due to the permanent closing of the plant and the absence of collective bargaining units to which these Plaintiffs could now return.

No. 7. Defendants Mellon Bank, Crucible and Colt also deny that the benefits are owed either under the collective bargaining agreement or the pension agreement since Plaintiffs are not covered by any of these agreements. Additionally, even if Plaintiffs have a colorable claim to benefits under the agreement, Plaintiffs have failed to exhaust their remedies under each, which, in turn, deprives this Court of jurisdiction.

No. 8. From May 31 through October 31, 1982, Plaintiffs and the proposed class members received payments of severance benefits in excess of $865,000 from the Severance and Termination Allowance for Non-Union Salaried Employees Plan established by Crucible. This plan was established under the Employment Retirement Income Security Act of 1974, 29 U.S.C. Section 1001, et seq.

No. 9. Jurisdiction of this Court is founded upon Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. Section 185; the Declaratory Judgment Act, 28 U.S.C.

Section 2201; and the Employment Retirement Income Security Act of 1974.

No. 10. For the reasons that follow we hold that Plaintiffs have no right to be returned to the appropriate bargaining unit from which they were promoted. Consequently, the Union Defendants owe Plaintiff no duty of fair representation. Defendants' motions for summary judgment will be granted.

No. 11. The starting point of our analysis is Section 301 of the Labor Management Relations Act. That section reads as follows: "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." The predicate for jurisdiction under the act is a contract between an employer and a labor organization. *International Brotherhood of Teamsters v. Western Pennsylvania Motor Carriers Association*, 660 F. 2d 76, 83 (3d Cir. 1981). Since the contracts between Crucible Inc., and the Defendants are the only bargaining agreements at issue, Plaintiffs' rights, if any, must arise from these agreements. Moreover, a breach of a separate agreement between an employer and an employee cannot provide a jurisdictional basis for relief under Section 301 because Congress has specifically used the term "Labor Organization." See, *Local No. 1 v. International Brotherhood of Teamsters*, 614 F.2d 846, 849, N.3, (3d Cir. 1980).

No. 12. The sole issue to be resolved by this Court is whether the collective bargaining agreements bestow upon Plaintiffs the right to return to their original bargaining units following their layoffs as supervisory or managerial employees. In our judgment, such a right must either be expressly stated in the agreements, or at a minimum the agreements must be worded in such a manner to permit on interpretation of such a right.

No. 13. Plaintiffs concede that no express language is contained in any of the collective bargaining agreements

which authorizes a right to return to a bargaining unit. However, the basic agreement and the clerical agreement contain a clause that Plaintiffs contend should be interpreted in this regard. The clause reads as follows: "Local working conditions in effect at the date of this Agreement shall continue in effect (a) unless the reason or justification for the condition changes or disappears or (b) unless the condition is modified by the parties. If the Union is not satisfied with the Company's reason or justification for modifying the working condition, the dispute may be submitted to the complaint and grievance procedure. In no case shall local working conditions be effective to deprive any employee of rights under this Agreement." The Basic Agreement, page 124; Clerical Agreement page 109. The Plaintiffs argue that one of the local working conditions in effect on the date of these agreements was Crucible's practice of permitting supervisors and managers to return to the bargaining unit at the time of either a layoff or removal from supervisory duties. We disagree.

No. 14. Although the term "local working conditions" is not defined in either the Basic or Clerical Agreements, there is no evidence that the parties intended the decision or act of returning supervisors or managers to the bargaining unit to be within this phrase. Rather, the words "local working conditions" refer to items that promote the working environment for employees. For example, a) office space for clerical employees; b) number and length of rest and coffee breaks; c) length of lunch period; and, d) smoking activities while working.

No. 15. Our conclusion is based on several factors: First, the general meaning of the words "working conditions" in the field of industrial relations refers to those types of items articulated in finding No. 13. See *Corning Glass Works v. Brennan*, 417 U.S. 188, 200-203 (1974). Although *Corning Glass* involved an interpretation of the term "working conditions" as used in the Equal Pay Act of 1963, the case provides a broad overview of the meaning of "working conditions" consistent with our conclusion here. Second, the three bargaining agreements explicitly grant to management the dis-

cretion to control the work force. This discretionary grant of power set forth in the collective bargaining contract undermines plaintiffs' argument that the phrase "local working conditions" should somehow now be construed to accord Plaintiffs some contractual basis to assert with regard to the phrase "local working conditions." The specific contract language granting the company the discretionary control of its work force is as follows: "The management of the works and the direction of the working forces, including the right to hire, suspend or discharge for proper cause, or transfer, and the right to relieve employees from duty because of lack of work, or for other legitimate reasons, is vested exclusively in the Company, provided that this will not be used for purposes of discrimination against any member of the Union." Also, the clause in the Clerical Agreement provides: "The management of the office and the direction of the working forces, including the right to hire, promote, demote, suspend or discharge for proper cause, or transfer, and the right to relieve employees from duty because of lack of work or for other legitimate reasons, is vested exclusively in the Company, provided, however, that in the exercise of such functions, the Company shall not alter any of the provisions of this Agreement and shall not discriminate against any employee because of his membership in, or lawful activity on behalf of, the Union." There is no evidence of improper or discriminatory activity for use of this power by Crucible, and we find no vested right to be returned to the bargaining unit as asserted by Plaintiff.

No. 16. Not only do Plaintiffs fail to point to express language in the collective bargaining agreement to support their contention that some vested right requiring the company to return laid off supervisory personnel to the bargaining units, the definition of an employee for purposes of bargaining unit membership establishes that Plaintiffs are without the bargaining units. A "recognition clause" is extant in all three agreements. Except for some insignificant wording, the clauses are identical and they read as follows: "The Company recognizes the Union as the exclusive collective bargaining representative for the employees of the Company

and for the purposes defined in Article 1." Each agreement then proceeds to define "employee" in a different manner owing to the different types of employment covered by each agreement. The basic agreement states that: "The term 'employee' as used in this Agreement, applies to all production and maintenance employees of the Company employed in and about the Company's steel-manufacturing, steel-fabricating and by-product coke plants, excluding foremen in charge of any classes of labor, office clerical workers, guards, or watchmen, confidential and salaried employees." The Clerical Agreement proceeds as follows: "The term 'employee' as used in this Agreement applies to employees of recognized office departments for whom the Union has been certified by the National Labor Relations Board as the exclusive collective bargaining representative, excluding department heads, assistant department heads, supervisors and employees of such departments doing work of a confidential nature and/or directly pertaining to management functions."

The Melted Products Agreement reads: "The Union represents and this contract applies only to hourly paid employees in the Company's production, maintenance and research Sections in its Vacuum Melted Products Department. The Union does not represent and this contract does not apply to: (a) foremen in charge of any class of labor, office clerical employees, guards or watchmen, salaried employees, and employees who do work of a confidential nature and/or which directly pertain to management functions, and (b) management trainees hired by the Company for work not covered by the contract but who may be assigned to work covered by the contract during their prescribed training period; provided, however, that these assignments shall not result in the layoff of employees covered by this Agreement." We find that Plaintiffs as supervisory or management personnel are not employees within the definition of "employee" in the collective bargaining agreements, and, accordingly, may not claim benefits resulting from the agreements. In this regard, as we understand Plaintiffs' argument, they do not dispute that they are without the bargaining units due to their supervisory or managerial status from a purely defini-

tional standpoint of "employee." Rather, Plaintiffs contend that although they were supervisors and managers before their layoff, at the moment they were laid off they no longer could exercise supervisory or managerial duties, and, thus, they became employees within the bargaining units. We disagree, because the layoff did not affect the status of the employees, either prior to or following the layoff. Plaintiffs were supervisors and managers at all times. Plaintiffs' argument is analogous to an employee attempting to argue that if an employee is laid off he or she is no longer an employee, and, thus, has no rights under the collective bargaining agreement. Obviously, a layoff cannot affect the status of an employee. *See Wallick and Schwalm Company*, 95 N.L.R.B. 1262 (1951). It follows that since Plaintiffs were supervisory and managerial employees Crucible and Colt Industries have no duty to arbitrate, nor do the Defendant Locals or the International, any issue with these persons. *See United Steelworkers Local 1617 v. General Fireproof Company*, 464 F.2d 726 (6th Cir. 1972) and *General Telephone Company of California v. Communications Workers of America*, 402 F.2d 255 (9th Cir. 1968). It further follows that the Local Unions have breached no duty of representation since they do not represent the Plaintiffs. *Cooper v. General Motors Corporation*, 651 F.2d 249 (5th Cir. 1981).

No. 17. The only sections of the agreement which grant any rights to the supervisory or managerial personnel deal with seniority. The seniority clauses of the Basic and Clerical Agreements are practically identical. The distinctions are irrelevant for the disposition of this matter at hand. The clause reads as follows: "In the event that the employee covered by this agreement is promoted following August 2, 1956, to a supervisory position not so covered, and is later demoted to a classification covered by this Agreement, the employee shall assume his seniority as accrued at the time of his promotion plus credit for time spent in the supervisory position up to two years following his promotion." And then there is a clause which deals with older employees. The seniority clause in the Melted Products Agreement states: "In the event an employee covered by this Agreement is tempo-

rarily transferred to a position not covered by this Agreement, he shall continue to accrue continuous service while such transfer remains temporary. An employee assigned as a temporary foreman on a weekly basis will not work overtime in the bargaining unit during the week in which he is assigned as a temporary foreman." Here Plaintiffs aver that Crucible and the United Steelworkers bargained over supervisory rights: First, by preserving accumulated seniority of bargaining unit members promoted to supervisor; second, by permitting these supervisors to accumulate bargaining unit seniority while serving as supervisors. As a result of this bargaining, Plaintiffs contend that the Union now owes the supervisors a duty of fair representation. We again disagree.

No. 18. The seniority clauses do not require the Company to demote rather than lay off. Rather, management has the sole discretion concerning control of the work force. Management alone can decide whether to demote or lay off supervisory and managerial persons. The seniority clause does not bind management to choose demotion over layoff or vice versa. *See United Steelworkers Local No. 1617 v. General Fireproof Company*, 464 F.2d 726 (6th Cir. 1972); *Gannon v. Baltd Anchor and Chain*, 459 F. Supp. 457 (E.D. Pa.), *aff'd mem.* 588 F.2d 820 (3d Cir. 1978). Consequently, the Unions only have a duty of fair representation to supervisors once they have been demoted. If management decides not to demote, the Union owes no duty to supervisors since they are not members of the collective bargaining unit. *Cooper v. General Motors Corporation*, 651 F.2d 249 (5th Cir. 1981).

No. 19. Plaintiffs' reliance upon *United Steelworkers of America v. Canron, Inc.*, 580 F.2d 77 (3d Cir. 1978), is misplaced. Plaintiffs contend that *Canron* holds that the question of arbitrability of a dispute is not determined by the status of the grievant but by the nature and duties of the obligations of the parties under contract. Thus, the issue is not whether Plaintiffs were supervisors or managers without the bargaining unit, rather whether Crucible bargained with the Union over rights and/or benefits. And in our judgment the facts in *Canron* are distinguishable. In *Canron* the Plaintiffs were retired employees claiming the employer under the collec-

tive bargaining agreement agreed to provide health and life insurance benefits for the retiree. Some of the retirees have never worked for Canron, but had worked for a subsidiary acquired by Canron. The collective bargaining agreement provided grievance procedures for members employed by the Company. Although the agreement delineated these benefits for retirees, the Company argued that as to those retirees who never worked for Canron, the grievance procedures were inapposite. The Court of Appeals concluded that the collective bargaining agreement was subject to an interpretation that the retirees could utilize the grievance procedure because the collective bargaining agreement was ambiguous. The Court was unable to say, as a matter of law, the grievance procedures excluded those retirees. Thus, arbitration was granted as to his issue.

No. 20. Here, to the contrary, this Court can unequivocally state that as a matter of law the supervisors and managers are not covered by the collective bargaining agreements. The agreements are perfectly clear, to wit, unless the supervisors are first demoted they have no rights. Ambiguity does not exist under our facts, and, accordingly, *Canron* is not controlling.

No. 21. For purposes of comprehensive appellate review, we will address the past decisions of Crucible in returning supervisors to the bargaining unit from a perspective other than an interpretation of the collective bargaining agreements. Although Plaintiffs in their complaint rely exclusively upon the Local working conditions clause to establish this right of return, it is possible to interpret the complaint as stating that past incidents constituted a modification of the collective bargaining agreement or agreements. The modification can be analyzed from two different perspectives: First, from the rights of the members in the bargaining unit; and, second, the binding effect upon the company and the supervisors resulting from modification by past action.

No. 22. If Plaintiffs were granted a vested right to return to the bargaining units, this would involve a modification of the collective bargaining agreements. Two portions of the agreement would be modified: First, the management discre-

tion clause would be affected because management would be prohibited from controlling the work force. Of more significance, the seniority clause would be altered because the motion would be automatic. Ostensibly, the rights of the members of the bargaining unit would be changed because a supervisor would be automatically demoted which conceivably could displace a member in the bargaining unit from his employment. Thus, the members have relinquished job security through no action of their own. Accordingly, a unilateral modification of the collective bargaining agreement would occur by management to the detriment of the members which is impermissible. See *N.L.R.B. v. Katz*, 369 U.S. 736 (1962).

No. 23. Aside from the effect upon the members of the bargaining units, a modification may alter the rights of management. Past practice will not create vested rights if the actions contradict the express terms of the collective bargaining agreements. *Ford Motor Company*, 19 LA 237, (1952) (Shulman, Arb.), especially when the past action involves a basic management function such as direction of the work forces. *LeBlond Machine Tool, Inc.*, 76 LA 827, (1981) (Keenan, Arb.). Applying this analysis to the facts at hand, management had absolute discretionary rights as expressed by the terms of the collective bargaining agreements. Accordingly, the past incidents of returning supervisors to the bargaining units did not create vested rights binding upon management. As a result, summary judgment will be entered for the Defendants on all claims except the claim posted under ERISA.

No. 24. We also find that this Court has no jurisdiction under ERISA because Plaintiffs have failed to sue the proper Defendant and exhaust their remedies in pursuing the matter against the pension plan. We will, therefore, enter a Rule 12(b) motion to dismiss the claim or claims of Plaintiffs posted on the ERISA counts. In all other regards, a motion for summary judgment will be entered.

Now, it seems to the Court that certification of the class is appropriate. Rule 23 provides requisites to a class action: One or more members of a class may sue or be sued as

representative parties on behalf of all only if, one, the class is so numerous that joinder of all members is impracticable, which applies here; two, there are questions of law or fact common to the class, which certainly applies here; three, the claims or defenses of the representative parties are typical of the claims of the class, which certainly applies here, and the Court so finds; and, four, the representative parties will fairly and adequately protect the interests of the class, which is true in this case. The representatives have fairly and adequately protected the interests of the class which we will certify. Counsel for the Plaintiffs is competent to represent this class. He is an experienced practitioner. The briefs and papers of record were very precise, and, indeed, outstanding on behalf of these claimants although he had a heavy burden in light of the precedent throughout this republic. And we find that the representative parties have fairly and adequately protected the interests of the class so as to authorize certification under Rule 23(a).

With regard to (b), an action may be maintained as a class action if the prerequisites of (a) are satisfied, and, in addition, one, the prosecution of the separate action by or against individual members of the class would create a risk of inconsistent or varying adjudication with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, and we find that that certainly is applicable here; or, (b), adjudications with respect to individual members of the class which would, as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests – again, we find this is established under the circumstances; and, two, the party opposing the class has acted or refused to act on the grounds generally applicable to the class thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. The Court also finds as a fact that that situation has been established. Since we have certified this under a Rule 23(a) and (b)(1) and (2) class, there is no need that notifica-

tion be given to the other members of the class in light of the findings of this Court.

Now, the cases do indicate that the Court must be very careful in defining the class. The class in this instance is the non-union salaried employees of the Defendant Crucible who were formerly employed as supervisors or managers at a plant operated by Defendants in Midland, Pennsylvania, and who had been employed at one time in one of the units covered by one of the collective bargaining agreements and represented by the Defendant Locals 1212, 3177 and 5047.

A written order will follow.

Now, have I failed to address any issue, and is the class certification proper?

MR. POWDERLY: Yes.

THE COURT: All right. Anything further?

Very good. Thank you.

(Whereupon, the proceedings were concluded.)

Certified true and correct transcript.

_____

Colvin G. Vogel, Official Reporter

SUPERIOR COURT OF PENNSYLVANIA

PITTSBURGH DISTRICT

DAVID A NOBERS, ROBERT R. CAMPBELL, JR. GASPER P. PORTO, AND GARY T. WEEKLY, INDIVIDUALLY AND ON BEHALF OF THEMSELVES AND ALL OTHER SIMILARLY SITUATED,

Appellant

v.

CRUCIBLE, INC., A CORPORATION AND COLT INDUSTRIES, INC., A CORPORATION

No. 1251
Pittsburgh, 1987

ORDER

AND NOW, this 25th day of July, 1988, it is ordered as follows:

____ Order affirmed.

____ Order reversed.

X Judgment Reversed. Jurisdiction is relinquished.

____ Judgment of Sentence affirmed.

____ Judgment of Sentence reversed.

____ Order vacated and lower court directed to proceed in accordance with opinion filed herewith.

____ Order modified as set forth in opinion filed herewith.

____ Costs to be taxed as provided by Chapter 27 of the Pa.R.A.P.

____ Costs to be taxed as provided in opinion filed herewith.

____ Appeal quashed.

BY THE COURT

/s/ ELEANOR R. VALECKO

Deputy Prothonotary

IN THE SUPERIOR COURT OF PENNSYLVANIA

DAVID A. NOBERS, ROBERT R. CAMPBELL, JR., GASPER P. PORTO, AND GARY T. WEEKLY, INDIVIDUALLY AND ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,

Appellant

v.

CRUCIBLE, INC., A CORPORATION AND COLT INDUSTRIES, INC., A CORPORATION,

Appellee

No. 1251
Pittsburgh 1987

Appeal from the Judgment of the Court of Common Pleas of Beaver County, Civil at No. 843-1984.

BEFORE: TAMILIA, POPOVICH and HOFFMAN, JJ.

OPINION BY POPOVICH, J: Filed: July 25, 1988

This is an appeal from the judgment of the Court of Common Pleas of Beaver County granting the preliminary objections in the nature of a demurrer as to jurisdiction against the appellants/plaintiffs (David A. Nobers, Robert R. Campbell, Jr., Gasper P. Porto and Gary T. Weekly, individually, and on behalf of themselves and all other similarly situated). We reverse.

Since review of the sustainment of preliminary objections in the nature of demurrer is sought, the well-pleaded factual allegations set forth in the complaint are to be regarded as true. *Irti v. Equibank. N.A.*, 318 Pa. Super. 268, 464 A.2d 1336 (1983). Further, if the facts as pleaded state a claim for which relief may be granted under any theory of the law, then there is sufficient doubt to require the preliminary

objections in the nature of a demurrer to be rejected. *Mazzagatti v. Everingham*, 512 Pa. 266, 516 A.2d 672 (1986).

Viewed in this light, the record indicates that the plaintiffs filed a two-count complaint seeking "class action" certification to recoup damages from the appellees/defendants (Colt Industries, Inc. and its wholly owned subsidiary, Crucible, Inc., now incorporated as Colt Industries Operating Corp.) for violation of an alleged oral agreement/implied contract whereby the class of plaintiffs was "explicitly promised", at the time of promotion from a collective bargaining unit to a supervisory or managerial position, "a right to return to the bargaining unit from which promoted at the time of layoff or to be treated as a bargaining unit person on layoff status." (Paragraph 36)

Prior to the defendants ultimately closing all or part of their plant in Midland, the plaintiffs were laid-off or discharged as salaried employees instead of being returned to the bargaining unit out of which they initially were promoted or allowed to maintain laid-off status in the same unit. This, the plaintiffs contended, resulted in their incurment (sic) of damages "in the form of lost supplemental unemployment benefits . . . . lost immediate pension benefits . . . . lost pension benefits . . . [and] lost insurance benefits." (Paragraphs 43-46, 50-53)

Thereafter, the defendants filed a petition seeking to remove the suit to the United States District Court for the Western District of Pennsylvania on grounds of compliance with 28 U.S.C. § 1332 and 1441 (Diversity of citizenship and amount in controversy exceeded $10,000), as well as pendent and ancillary jurisdiction, the latter of which referred to the District Court's prior ruling in favor of the defendants regarding the same subject matter in *Nobers, et al. v. Crucible, Inc., et al.*, Civil Action No. 82-1846 (W.D. Pa. 1982), *aff'd mem.* 722 F.2d 733 (3rd Cir. 1983) warranting such a removal.

The plaintiffs responded by submitting a motion with the same court seeking to remand the case to Common Pleas Court. Therein, they claimed that the joint actions of the defendants, which were inseparable and not discrete, rendered removal under Section 1441 inappropriate. Further,

because the prior federal suit involved additional parties not presently named, was based on the Labor Management Relations Act (29 U.S.C. § 185) and was brought to enforce the terms of a collective bargaining agreement, as compared to an express or implied contract of employment, it was averred that "[t]here was no factual nexus between the two cases to which the principles of *res judicata* or collateral estoppel appl[ied] such that the Court's ancillary or pendent jurisdiction m[ight] be the basis for removal of the[] proceedings." The District Court agreed and entered an order to that effect on February 8, 1985.

Twenty days after the District Court remanded the suit to Common Pleas Court, the defendants filed preliminary objections in the nature of a demurrer contemporaneously with presenting a complaint in federal court to enjoin the plaintiffs' state action.

In its complaint, the defendants stated that the unfavorable outcome of the previous federal suit by the plaintiffs at No. 82-1846, being premised upon the same allegations of contractual breach, made the state suit nothing more than "an attempt to evade judgment in Civil Action No. 82-1846" by the plaintiffs. Additionally, the defendants asserted that the plaintiffs' claims seeking the recoupment of damages "relate[d] to an[] employee benefit plan[]", and, as a result, were exclusively within the province of the Employee Retirement Income Security Act[1] (ERISA) and not subject to review in state court.

The plaintiffs filed an answer to the federal complaint in which they alleged, *inter alia*, that the state action was premised upon "a common law claim for breach of contract" and not a violation of a collective bargaining agreement, as had been the case in the earlier federal suit. Thus, *res judicata* did not apply. Further, the plaintiffs went on to contend, "because there [were] no federal claims in the pending state court action", notions of federal pre-emption did not come into play since "[q]uestions of pre-emption are determined by reference to the basis of liability not the scope

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[1] 29 U.S.C. § 1000 et seq.

of the remedy." The end result of the federal complaint was its dismissal by court order dated August 12, 1985.

As for the content of its preliminary objections, the defendants averred that "no employment relationship" existed between Colt Industries, Inc. and the plaintiffs. Thus, no agreement, either oral or written, bound the two contractually. Also, because the plaintiffs' prior federal suit covered "virtually" the same subject matter, "[t]he instant action [was] . . . barred by the doctrine of *res judicata*." (Defendants' Complaint, Paragraph 12)

In response, the plaintiffs denied the availability to the defendants of *res judicata* or collateral estoppel as a defense since the issue litigated in the earlier federal suit (scope of collective bargaining agreement) was not identical to the present suit, which, in contrast, sought relief under "common law claims for breach of an express and/or implied contract of employment." (Plaintiffs' Response to Defendants' Preliminary Objections, Paragraph 3)

Prior to argument, the defendants filed an amendment to their preliminary objections contending that, by stipulation, the parties had agreed that the plaintiffs' suit against the defendant Colt Industries was for tortious interference of the plaintiffs' contract with Colt Industries Operating Corp., Colt's subsidiary. As such, the tort allegedly committed by Colt Industries, Inc. was "solely cognizable under Section 510 of . . . ERISA, 29 U.S.C. § 1140", resulting, so believed the defendants, in the state action being pre-empted by Section 514 of ERISA, 29 U.S.C. § 1144 and subject to dismissal.

Following argument, the Common Pleas Court issued an order granting the defendants' preliminary objections as to jurisdiction and dismissed the action. This timely appeal ensued.

The sole contention raised centers upon whether the plaintiffs' common law cause of action for breach of contract, alleging the loss and seeking the reinstatement of supplemental unemployment, pension and insurance benefits, is preempted by ERISA so as to divest Common Pleas Court of jurisdiction to hear the complaint.

As noted most recently by a panel of this Court:

> "[T]he question whether a certain state action is preempted by federal law is one of congressional intent. '"The purpose of Congress is the ultimate touchstone."'"

Engle v. West Penn Power Co., ____ Pa. Super. ____, ____, 530 A.2d 913, 915 (1987) (Citation omitted).

In light of the aforesaid, we observe that Congress enacted ERISA to afford comprehensive federal protection of the interests of participants in employee benefit plans. See 29 U.S.C. § 1001; *Lukus v. Westinghouse Electric Corp.*, 276 Pa. Super. 232, 419 A.2d 431 (1980) (*allocatur refused*, June 1, 1980). Instantly no one disputes that the defendants' Supplemental Unemployment Benefit Plan, Pension Agreement and Program Insurance Benefits fall under the label of either an employee benefit plan, defined benefit plan or welfare benefit plan, respectively. (See RR 22a, 40a and 87a) And, as such, are subject to the provisions of ERISA. See 29 U.S.C. § 1003. State regulation of the plans is therefore restricted by 29 U.S.C. § 1144, which provides:

> (a) Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter *relate to* any employee benefit plan. . . .
>
> ° ° °
>
> (c) For purposes of this section:
>
> (1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State.
>
> . . . .
>
> (2) The term "State" includes a State, and political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter.

(Emphasis added)

It is the position of the defendants and the court below that the plaintiffs' claim for damages, inasmuch as it seeks satisfaction through the attainment of benefits provided for under the various plans, "related to" employee benefit plans. This, in turn, brings the plans within the ambit of ERISA's pre-emptive status, and, as a result, subjects the suit to exclusive federal jurisdiction. (See Defendants' Brief at 7; Lower Court's Opinion at 7) We find the contentions of the defendants and court below to be disingenuous, and we do so on the instructive case of *Shaw v. Westinghouse Electric Corp.*, 276 Pa. Super. 220, 419 A.2d 175 (1980) (*reargument denied*, July 8, 1980).

In *Shaw*, the plaintiff filed a two-count complaint in assumpsit, the first portion of which concerns us since it was alleged therein that the plaintiff's employer breached its contract with Shaw by not paying him promised salary increases. It was further averred that, as a result of the breach, Shaw sustained losses in (1) "retirement and disability benefits" and (2) "pension benefits".

Prior to completion of the trial, the employer filed a motion to dismiss the action on the ground that ERISA rendered the court without jurisdiction over the subject matter of the complaint. With the denial of the motion, an appeal was perfected to this Court. In the course of denying the employer's arguments with regard to the pre-emptive effect of ERISA, we wrote:

> Section 1144(a) explicitly states that the provisions of ERISA supersede State laws only "insofar as they . . . *relate* to any employee benefit plan." The question for disposition, therefore, is whether Shaw's assumpsit action against Westinghouse for disability and retirement benefits may be said to "relate to" the disability benefits and retirement pension plans established by Westinghouse for its employees. More precisely, the question is whether Shaw's assumpsit action constitutes an attempt to regulate areas explicitly governed by the provisions of ERISA, or whether the action relates primarily to matters not governed by ERISA, and only indirectly affects Westinghouse's employee benefit plans in a way not in

conflict with the purposes of [sic] ERISA is designed to achieve. If the former is true, then the action may be pre-empted by section 1144; but if the latter is true, the action is not pre-empted. See *Lukus v. Westinghouse Electric Corp., supra* (collecting cases); *Commonwealth ex rel. Magrini v. Magrini*, 263 Pa. Super. 366, 398 A.2d 179 (1979).

* * * *

The present case . . . involve[s] . . . alleg[ations] that Westinghouse established a plan providing fewer benefits than the benefits Westinghouse promised him, Shaw alleges that Westinghouse has paid him less salary and fewer bonuses than it promised to pay, and that as a result, he has received, and will continue to receive in the future, fewer benefits under Westinghouse's disability benefits and retirement pension plans than he would have received had he been properly paid by Westinghouse. Thus, in order for Shaw to recover on his claims, the lower court will be required to determine what Shaw's benefits would have been *under the plans* had Westinghouse paid him the promised salary increases and bonuses. Additionally, the court may be required to determine whether Shaw will have a future claim against the disability benefits and retirement pension plans for increased benefits based upon a judgment recovered against Westinghouse on his salary and bonus claims. Should the lower court find it necessary to address such issues, then it might be argued that the lower court would be making an adjudication "relating to" the plans. We are, nevertheless, unable to conclude that the lower court's adjudication would violate section 1144 of ERISA.

Initially, we note that section 1132(e)(1) of ERISA grants state courts competent [sic] jurisdiction and federal district courts concurrent jurisdiction of an action brought by a participant in an employee benefit plan to recover benefits due to him under the terms of the plan, or to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the

plan. Thus, Congress has explicitly given state courts the power to adjudicate the very issues the lower court may be required to reach in Shaw's suit against Westinghouse.

* * * *

...the nature of Shaw's action and the limitation in section 1144(a) of ERISA that only state laws that "relate to" employee benefit plans are superseded by the Act. Shaw's suit against Westinghouse relates solely to Westinghouse's liability for breach of an employment contract. Admittedly, in determining Westinghouse's liability, the lower court may have to make determinations concerning Shaw's present and future rights to benefits under Westinghouse's plans, and decide whether Shaw's right to participate in the plans has been wrongfully impaired by Westinghouse. Yet, these determinations will affect only the rights and liabilities of the parties to this action (*i.e.*, Shaw and Westinghouse) towards each other; specifically, unless Westinghouse and its employee benefits plans are privies or the plans perform some act that estops them from questioning the lower court's determinations at a later date, the determinations of the lower court in this case will not conclude the rights and liabilities of the plans and Shaw *inter se*. *See generally Safeguard Mutual Ins. Co. v. Williams*, 463 Pa. 567, 574, 345 A.2d 664, 668 (1975); *Albert v. Lehigh Coal & Nav. Co.*, 431 Pa. 600, 613, 246 A.2d 840, 846 (1968); *Thompson v. Karastan Rug Mills*, 228 Pa. Super. 260, 323 A.2d 341 (1974).

276 Pa. Super. at ____-____, 419 A.2d at 179-180 (Footnote omitted; emphasis in original).

At bar, as in *Shaw*, the plaintiffs' suit relates solely to the defendants' liability for breach of an employment contract, the existence of which is in dispute and, therefore, subject to resolution by a fact-finder. More importantly, as pointed out in *Shaw*, the plaintiffs' rights to benefits and whether participation under the various plans have been wrongfully denied "affect[s] only the rights and liabilities of the parties to this action", and "the determinations of the lower court in this

case will not conclude the rights and liabilities of the plans and [the plaintiffs] *inter se.*" *Id.*

The association between the suit and the plans being tangential at best, we fail to see how ERISA is any more than incidentally involved, a factor which counsels against us concluding that the plaintiffs' claim is pre-empted by ERISA. To the same effect see *Welsh v. Northern Telecom, Inc.*, 354 S.E.2d 746 (Ct. App. N.C. 1987); *Golen v. Chamberlain Manufacturing Corp.*, 139 Ill.App.3d 53, 93 Ill.Dec. 677, 487 N.E.2d 121 (1985); and *Shaver v. N.C. Monroe Construction Co.*, 306 S.E.2d 519 (Ct. App. N.C. 1983), and compare with *B.F. Tatterson v. Koppers Co., Inc.*, 312 Pa. Super. 326, 458 A.2d 983 (1983).

Since we conclude that *Shaw* controls the outcome of this case and warrants a reversal of the lower court's actions, we see no need to engage in a dissertation of the law other than what has already been stated on the subject under review.

Accordingly, consistent with our findings this day, we reverse the judgment of the court below. Jurisdiction is relinquished.

Opinion filed - August 7, 1987 - Judge Joseph S. Walko

DAVID A. NOBERS, ROBERT R. CAMPBELL JR., GASPER P. PORTO and GARY T. WEEKLY, individually and on behalf of themselves and all others similarly situated,

Plaintiffs

v.

CRUCIBLE INC., a corporation and COLT INDUSTRIES, INC., a corporation,

Defendants

No. 843 of 1984

PRELIMINARY OBJECTIONS - ERISA - PRE-EMPTION - LACK OF JURISDICTION

1. If the well-pleaded material, relevant facts and every inference fairly deducible from those facts state a claim for which relief may be granted under any theory of law, then there is sufficient doubt to require the preliminary objection in the nature of a demurrer must be rejected.

2. Section 502 of ERISA sets forth a comprehensive enforcement scheme for civil actions which may be brought by a participant or beneficiary. 29 U.S.C. § 1132.

3. A state law which "relate(s) to any employee benefit plan" is pre-empted by ERISA, § 514(a),(b)(2)(A), 29 U.S.C. § 1144(a),(b)(2)(A).

4. The express pre-emption provisions of ERISA are deliberately expansive and are designed to establish pension plan regulation is exclusively a federal concern.

5. The phrase "relate to any employee benefit plan" must be given its broad common sense meaning so that if a state law has a connection with or reference to such a plan, it is pre-empted.

6. Plaintiffs' Complaint seeks damages in the form of lost supplemental unemployment benefits, lost immediate pension benefits, lost pension benefits in the event of a plant closing and lost insurance benefits. Because Plaintiffs claim for damages goes directly to the establishment of a benefit plan, plaintiffs' claim does "relate to an employee benefit plan." Therefore, as mandated by the ERISA provisions, this Court is without jurisdiction.

Attorneys for Plaintiffs

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COURT OF COMMON PLEAS FOR THE
COUNTY OF BEAVER
PENNSYLVANIA
Civil Division

DAVID A. NOBERS, ROBERT R. CAMPBELL, JR., GASPER P. PORTO and GARY T. WEEKLY, individually and on behalf of themselves and all others similarly situated,

Plaintiffs

v.

CRUCIBLE INC., a corporation and COLT INDUSTRIES, INC., a corporation,

Defendants

No. 843 of 1984

OPINION

WALKO, J. August 7, 1987

Presently before the Court are the Preliminary Objections filed by Defendants Crucible Inc. and Colt Industries, Inc. (Colt) in which they argue that the allegations raised in Plaintiffs' Complaint are barred by the doctrine of *res judicata* and that the Court lacks jurisdiction over the claim for Defendant Colt's tortious interference with the contractual relationship between Defendant Colt Industries Operating Corporation (CIOC) (formerly Crucible, Inc.) and Plaintiffs.

A preliminary objection in the nature of a demurrer admits as true all well-pleaded material, relevant facts and every inference fairly deducible from those facts. Only where the Complaint clearly and without a doubt fails to state a claim for which relief may be granted can a demurrer be sustained. *County of Allegheny v. Commonwealth*, 507 Pa. 360, 372, 490 A.2d 402, 408 (1985). If the facts as pleaded state a claim for which relief may be granted under any theory of

law, then there is sufficient doubt to require the preliminary objection in the nature of a demurrer to be rejected. *Mazzagatti v. Everingham by Everingham*, ___ Pa. ___, ___, 516 A.2d 672, 675 (1986).

It is under the above standard of review that we analyze the facts, stipulated to by the parties, of the present case.

On June 25, 1984, Plaintiffs, supervisors of Crucible, filed the instant Complaint alleging that at the time of their supervisory promotion there was an oral and/or implied contract containing a right, at the time of layoff, to return to the bargaining unit from which they were promoted or to be treated as a bargaining unit person in layoff status. Plaintiffs claim that Defendants have breached this provision which has resulted in the loss of immediate and future pension, insurance, severance and other benefits. Plaintiffs also allege that Colt instructed CIOC not to return Plaintiffs to their bargaining unit status when the Midland plant closed on October 31, 1982 so as to avoid the cost of benefits applicable to bargaining unit employees.

To properly discuss the case *sub judice*, we must review the previous litigation between the parties.

On September 3, 1982, Plaintiffs filed a Complaint in the U.S. District Court for the Western District of Pennsylvania against Colt Industries, Inc.; Crucible Inc., now Colt Industries Operating Corporation (CIOC); the United Steelworkers of America, International Union; United Steelworkers of America, Local Union 1212, 3177, 5047; and Mellon Bank, N.A. Jurisdiction was premised on the Labor Management Relations Act (LMRA), 29 U.S.C. § 185; Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 et seq.; and the Federal Declaratory Judgment Act, 28 U.S.C. § 2201.

On November 12, 1982, the United Steelworkers of America and the affiliated local unions filed Motions to Dismiss, or in the alternative, Motions for Summary Judgment. On November 18, 1982, the same Motions were also filed by Colt, CIOC and Mellon Bank.

In his Order dated December 10, 1982, Judge Ziegler granted Plaintiffs leave to file an Amended Complaint, dis-

missed the ERISA claim and granted Defendants' Motion for Summary Judgment on all other counts. Judge Ziegler also certified the class of Plaintiffs consisting of all supervisory and managerial employees of Crucible who had been employed in job classifications included in the collective bargaining units represented by Defendants United Steelworkers of America, Local Unions 1212, 3177 and 5047 and promoted to non-union eligible positions.

On September 21, 1983, the Court of Appeals for the Third Circuit affirmed the judgment without Opinion, 722 F.2d 733 (3d Cir. 1983).

Having reviewed the previous Federal litigation between the parties, we will now continue our discussion and examination of the pleadings filed in the present case.

In response to Plaintiffs' Complaint, on July 26, 1984, Colt and CIOC filed a Petition for Removal based on diversity of citizenship and ancilliary jurisdiction over the State Court Complaint because of the District Court's previous ruling.

On September 19, 1984, Plaintiffs filed a Motion to Remand to this Court. On February 8, 1985, Judge Ziegler granted Plaintiffs' Motion to Remand. *Nobers v. Crucible, Inc.*, 602 F. Supp. 703 (W.D. Pa. 1985). Judge Ziegler noted that he was at a loss to explain the failure of Plaintiffs to include the oral and/or implied contract agreements as pendent claims in the original Federal action. *Nobers* at 708-709.

On March 1, 1987, Defendants filed the present preliminary objections and on October 10, 1985, filed the amendment to preliminary objections.

On March 11, 1985, Colt and CIOC filed an action in the District Court pursuant to the All Writs Act requesting the Court to enjoin the State Court proceeding brought against Colt and CIOC asserting that the pending state claims should have been alleged as pendent claims in the previous Federal action and are now barred by *res judicata*.

On August 12, 1985, the District Court denied the request for injunctive relief and dismissed the Complaint. The Court agreed with Defendants (Plaintiffs in the present

action) that the pending common law contract claims are separate and distinct from the previous claims which were based on the collective bargaining agreement even though they could have been appended to the earlier Federal action. Judge Ziegler noted, that if the pendent state law claim had been asserted after the December 10, 1982 Order, the Court would have dismissed them without prejudice since judgment was entered well in advance of trial.

On March 6, 1986 the Court of Appeals for the Third Circuit affirmed and Defendants' Petition for Rehearing was denied.

It is Defendants' contention that the Complaint fails to state a claim upon which relief can be granted against Defendant Colt because Plaintiffs' Complaint does not allege the existence of an employment contract or employment relationship between Plaintiffs and Colt. Defendants' amendment to preliminary objections argues that the tort allegedly committed by Colt is solely cognizable under § 510 of ERISA, 29 U.S.C § 1140, therefore, it is pre-empted by § 514 of ERISA, 29 U.S.C. § 1144.

Defendants also contend that the allegations in the instant Complaint are virtually identical to the allegations in the previous Federal action and clearly were or could have been litigated therein, therefore, the instant claim is barred by *res judicata*. We do not believe that the doctrine of *res judicata* applies. In his Memorandum Opinion, Judge Ziegler declined to determine whether the Federal rules of *res judicata* should bar the pending state action.

The question of jurisdiction however, is controlling and we will now focus our discussion on that issue. In two recent cases, the United States Supreme Court has examined the pre-emptive force of ERISA § 502(a), 29 U.S.C. § 1132(a)(1)(A),(B) and § 514(b)(2)(A),(B) 29 U.S.C. § 1144(a),(b)(2)(A),(B), *Pilot Life Insurance Co. v. Dedeaux*, 55 U.S.L.W. 4471 (U.S. April 6, 1987), *Metropolitan Life Insurance Co. v Taylor*, 55 U.S.L.W. 4468 (U.S. April 7, 1987).

Both the language and the legislative history of the civil enforcement provisions of ERISA, § 502, 29 U.S.C. § 1132

clearly demonstrate that it is the exclusive vehicle for actions by ERISA plan participants and beneficiaries asserting improper proceeding of a claim for benefits.

The Section provides:

> (a) Persons empowered to bring a civil action. A civil action may be brought —
>
> (1) by a participant or beneficiary —
>
> (A) for the relief provided for in subsection (c) of this section, or
>
> (B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan:
>
> (2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under Section 1109 of this title; . . .

The Supreme Court in *Pilot Life Insurance Co.*, 55 U.S.L.W. at 4474 examined the enforcement scheme of ERISA § 502 (a) and explained:

> In sum, the detailed provisions of § 502(a) set forth a comprehensive civil enforcement scheme that represents a careful balancing of the need for prompt and fair claims settlement procedures against the public interest in encouraging the formation of employee benefit plans. . .
>
> The deliberate care with which ERISA's civil enforcement remedies were drafted and the balancing of policies embodies in its choice of remedies argue strongly for the conclusion that ERISA's civil enforcement remedies were intended to be exclusive.

Likewise, the legislative history also supports the exclusivity intended for § 502(a). The Conference Report on ERISA which describes the civil enforcement provisions of § 502(a) states:

"Under the conference agreement, civil actions may be brought by a participant or beneficiary to recover benefits due under the plan, to clarify rights to receive future benefits under the plan, and for relief from breach of fiduciary responsibility . . . All such actions in Federal or State courts are to be regarded as arising under the laws of the United States in similar fashion to those brought under section 301 of the Labor-Management Relations Act of 1947." H.R. Conf. Report No. 93-1280, p. 327 (1974) (emphasis added) [sic]." *Pilot Life Insurance Co.* at 4474, *Metropolitan Life Insurance Co.* at 4470.

If a state law relates to an employee benefit plan it is preempted, § 514(a),(b) as set forth in 29 U.S.C. § 1144(a),(b) reads as follows:

(a) Supersedure; effective date.

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

(b) Construction and application.

(1) This section shall not apply with respect to any cause of action which arose, or any act of omission which occurred before January 1, 1975.

(2) (A) Except as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 1003(a) of this title, which is not exempt under section 1003(b) of this title (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for

purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

The Supreme Court noted that the express pre-emption provisions of ERISA are deliberately expansive and are designed to "establish pension plan regulation as exclusively a federal concern." *Pilot Life Insurance Co.* at 4472 quoting *Alessi v. Raybestos-Manhattan Inc.*, 451 U.S. 504, 523 (1981).

Construed as an expansive provision, the phrase "relate to any employee benefit plan" must be given its broad common sense meaning so that if a state law has a connection with or reference to such a plan it is pre-empted. *Pilot Life Insurance Co.* at 4472, *Metropolitan Life Insurance Co.* at 4470.

Guided by the above, we examine plaintiffs present Complaint. In paragraph 43 Plaintiffs allege that "the breach of this oral contract of employment has resulted in damages to the named plaintiffs and all other similarly situated supervisors and managers in the form of lost supplemental unemployment benefits. . ." Paragraph 44 states a claim for damages in the form of "lost immediate pension benefits. . ." and paragraph 45 states a claim for "lost pension benefits in the event of a plant closing. . ." Paragraph 46 claims damages for "lost insurance benefits." The same damages are listed under Count I Assumpsit-Express Contract and Count II Assumpsit-Implied Contract.

Because Plaintiffs' claim for damages goes directly to the establishment of a benefit plan, Plaintiffs' claim does "relate to" an employee benefit plan, therefore, it is pre-empted by ERISA and we are, therefore, without jurisdiction to entertain the matters raised.

Although we are personally sympathetic to the issues raised by Plaintiffs', we must nonetheless follow the law as cited above hence we enter the following Order:

COURT OF COMMON PLEAS FOR THE
COUNTY OF BEAVER
PENNSYLVANIA
Civil Division

DAVID A. NOBERS, ROBERT R. CAMPBELL, JR., GASPER P. PORTO and GARY T. WEEKLY, individually and on behalf of themselves and all others similarly situated, *Plaintiffs* v. CRUCIBLE INC., a corporation and COLT INDUSTRIES, INC., a corporation, *Defendants*	No. 843 of 1984

ORDER

WALKO, J. August 7, 1987

AND NOW this 7th day of August, 1987, after careful review and consideration of the legal briefs and oral arguments presented by counsel, it is hereby Ordered, Adjudged and Decreed that the Preliminary Objections filed by Defendants Crucible Inc. and Colt Industries, Inc. are granted as to jurisdiction.

BY THE COURT

/s/ JOSEPH WALKO

J.

Supreme Court, U.S.
FILED
DEC 21 1992
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No. 92-597

In The

Supreme Court of the United States

October Term, 1992

THE 1975 SALARIED RETIREMENT PLAN FOR ELIGIBLE EMPLOYEES OF CRUCIBLE, INC., *ET AL.*,

Petitioners,

vs.

DAVID A. NOBERS, *ET AL.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Was the District Court's denial of injunctive relief, as affirmed by the Court of Appeals for the Third Circuit, required by Anti-Injunction Act, 28 U.S.C. § 2283?

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On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

RESPONDENTS' BRIEF IN OPPOSITION

SUMMARY OF ARGUMENT

The Anti-Injunction Act, 28 U.S.C. § 2283 prohibits the injunctive relief sought by Petitioners.

An injunction is not authorized in aid of the District Court's jurisdiction because the state claims in *Nobers, et al. v. Crucible, Inc., et al.*, No. 843 of 1984, Court of Common Pleas of Beaver

County, Pennsylvania (*Nobers II*), are not preempted by the Employees Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.* (ERISA). *Nobers v. Crucible,* 602 F. Supp. 703 (W.D. Pa. 1985); *Nobers v. Crucible,* 376 Pa. Super. 156, 545 A.2d 367 (1988). Even if the state claims in *Nobers II* are preempted, the Petitioner plans are not parties to *Nobers II* (which does not purport to determine the plans' obligations), and therefore an injunction is not necessary in aid of the District Court's jurisdiction in this case.

An injunction is not authorized to protect or effectuate a judgment of the District Court because *Nobers II* does not seek to relitigate *Nobers I. Colt v. Nobers,* No. 85-563 (W.D. Pa. 1985), *aff'd without opinion,* 787 F.2d 581 (3d Cir. 1986).

An injunction is not authorized by ERISA. *U.S. Steel Plan v. Musisko,* 885 F.2d 1170 (3d Cir. 1988), *cert. denied,* 110 S. Ct. 1121 (1990).

REASONS FOR DENYING THE WRIT

I.

THE DISTRICT COURT'S DENIAL OF INJUNCTIVE RELIEF IS REQUIRED BY THE ANTI-INJUNCTION ACT, 28 U.S.C. § 2283.

The Anti-Injunction Act reads:

> A Court of the United States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

28 U.S.C. § 2283.

A. An Injunction Is Not Authorized in Aid of the District Court's Jurisdiction in this Matter.

Petitioners seek to enjoin the prosecution of state law claims for breach of employment contracts in *Nobers, et al. v. Crucible Inc., et al.*, No. 843-1984 (Court of Common Pleas of Beaver County, Pennsylvania) (*Nobers II*). Although Petitioners are not parties to the pending state action, they nonetheless seek to enjoin Respondents from proceeding in state court.

Petitioners assert the Employees Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.* ("ERISA"), preempts *Nobers II*, despite the numerous rejections of this argument throughout the history of this case. *See Nobers v. Crucible, Inc.*, 602 F. Supp. 703, 708 (finding that *Nobers II*, "alleges only state law claims in contract and tort.") and *Nobers v. Crucible, Inc.*, 376 Pa. Super. 156, 545 A.2d 367 (1988) (finding that *Nobers II* relates "solely to the Defendants' liability for breach of an employment contract") 545 A.2d at 371.

Section 514 of ERISA provides that ERISA supersedes any and all state law insofar as they relate to an employee benefit plan. 29 U.S.C. § 1144. Petitioners rely upon *Ingersoll-Rand Co. v. McClendon*, 498 U.S. __, 112 L. Ed. 2d 474, 111 S. Ct. 478 (1990) where the Plaintiff claimed he was unlawfully discharged to prevent attainment of benefits under a plan covered by ERISA. In *Ingersoll-Rand*, a tort action, the existence of a pension plan was a critical factor in establishing a liability under the Texas Wrongful Discharge Law. In the state matter pending in *Nobers II*, liability turns upon the existence of a contract of employment and whether or not the Defendants breached that contract. Thus, in *Nobers II*, liability of the Defendants does not depend upon the existence of benefits plans and therefore *Ingersoll-Rand* is inapposite to *Nobers* II. Unlike Mr. McClendon, who had no cause of action absent a benefit plan, the Plaintiffs in *Nobers II* have a cause of action under state law whether or not a benefit plan exists.

Nobers II relates only to the liabilities of the parties to that action and the determination of the Court of Common Pleas in that case will not conclude the rights and liabilities of Petitioner benefit plans which are not parties to that action. An injunction cannot be *necessary* where Petitioners are not parties to *Nobers II* and that case will not determine Petitioners' obligations. *Nobers II* does not interfere with nor impair the District Court's consideration of disposition of the instant matter.

B. An Injunction Is Not Authorized to Protect or Effectuate Any Judgment of the District Court.

The relitigation exception to the Anti-Injunction Act is designed to permit a federal court to prevent state litigation of an issue previously presented to and decided by a federal court. An essential prerequisite for application of this exception is that the claims or issues which the federal injunction insulates from litigation and state proceedings actually have been decided by the federal court.

Relief from error, if any, is available through the state appellate courts and ultimately the United States Supreme Court. *Atlantic Coastline R. R. Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 26 L. Ed. 2d 234, 90 S. Ct. 1739 (1970); *Chick Kam Choo v. Exxon Corp.*, 486 U. S. 140, 100 L. Ed. 2d 127, 108 S. Ct. 1684 (1988). Claims or injunctive relief pursuant to this relitigation exception to the Anti-Injunction Act have already been litigated and rejected in *Colt Industries, Inc. v. Nobers*, No. 85-563 (W.D. Pa. 1985), *aff'd memorandum*, 787 F.2d 581 (3d Cir. 1986), the Defendants in *Nobers II* sought the same injunction which Petitioners seek in the instant matter and were rejected by the District Court and the Third Circuit.

C. No Act of Congress Expressly Authorizes an Injunction in this Matter.

Although the state claims in *Nobers II* are not preempted by

ERISA, Petitioners argue that ERISA authorizes an injunction against Respondents. ERISA's enforcement language and legislative history are inadequate to demonstrate congressional intent to defeat the absolute bar against federal injunctions found in § 2283. *U.S. Steel Plan v. Musisko,* 885 F.2d 1170, 1177 (3d Cir. 1989), *cert. denied,* 110 S. Ct. 1121 (1990).

This request for injunctive relief is plainly anticipatory, seeks injunctive relief where there is available an adequate remedy at law if the Court of Common Pleas of Beaver County issues any order which involves Petitioners and seeks an injunction where no irreparable harm is threatened.

Where have Petitioners been since 1984? The Petitioners are represented by the same counsel who represent Colt and Crucible and Petitioners clearly have had knowledge of *Nobers II* since 1984. After the latest remand by the District Court, there is no more opportunity for Colt and Crucible to avoid this litigation in Beaver County. If Petitioners are compelled to seek this injunctive relief, why have they waited until 1990 when this action has been pleading in Beaver County since 1984?

Why have Appellants sought to enjoin Appellees from prosecuting *Nobers II*? The relief sought by Petitioners would inure principally to the benefit of the *Nobers II* defendants Colt and Crucible. The Petitioners could have sought to enjoin Respondents from seeking relief against Petitioners, but the Petitioners sought injunction relief not just for themselves, but also for Colt and Crucible. These Petitioners should not be permitted by injunctive relief to achieve for Colt and Crucible that which has been denied them throughout the history of this case.

CONCLUSION

For the foregoing reasons, the Petitioners' Writ of Certiorari should be denied.

Respectfully submitted,

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IN THE
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OCTOBER TERM 1992

THE 1975 SALARIED RETIREMENT PLAN
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On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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IN THE

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OCTOBER TERM, 1992

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REPLY BRIEF IN SUPPORT

A. An Injunction Is Authorized in Aid of the District Court's Jurisdiction in this Matter

1. THE PANEL BELOW CORRECTLY FOUND THAT RESPONDENTS' CLAIMS IN *NOBERS II* ARE PREEMPTED AND SUBJECT TO EXCLUSIVE FEDERAL JURISDICTION

Respondents' substantive arguments regarding preemption are unavailing. (Respondents' Brief in Opposition, at 3 [hereinafter "Res.Br."].) The panel below correctly found that Respondents' claims are preempted by ERISA and are subject to exclusive federal jurisdiction under ERISA. (App. at 10a-11a.) The question presented for *certiorari* is whether the federal courts, upon finding preemption and exclusive federal jurisdiction, are empowered under the Anti-Injunction Act to enjoin state court proceedings.

Exclusive federal jurisdiction under ERISA section 502(e)(1), which provides compelling grounds to make injunctive relief available, follows from the related but separate

finding of preemption. (*See* Petition for Certiorari, at 7-11.) The panel's finding of preemption in this case is both dispositive[1] and indisputable; the panel's holding is perfectly in line with this Court's extensive jurisprudence on the subject of ERISA preemption. *See District of Columbia v. Greater Washington Bd. of Trade*, 61 U.S.L.W. 4039, 1992 U.S. LEXIS 7847 (Dec. 14, 1992); *Ingersoll-Rand Co. v. McClendon*, 111 S. Ct. 478 (1990); *FMC Corp v. Holliday*, 111 S. Ct. 403 (1990); *Massachusetts v. Morash*, 490 U.S. 107 (1989); *Mackey v. Lanier Collection Agency & Serv.*, 486 U.S. 825 (1988); *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1 (1987); *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987); *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987); *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724 (1985); *Shaw v. Delta Air Lines*, 463 U.S. 85 (1983); *Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Tr. for S. Cal.*, 463 U.S. 1 (1982); *Alessi v. Raybestos-Manhattan*, 451 U.S. 504 (1981).

Respondents attempt to mislead this Court by suggesting that *Ingersoll-Rand* is not determinative of the preemption issue here because *Ingersoll-Rand* involved a tort claim, while *Nobers II* is couched as a contract claim. (*See* Res.Br. at 3.) Since the state court lawsuit in *Ingersoll-Rand* involved "various tort and contract principles," *Ingersoll-Rand* applies equally to both. 111 S. Ct. at 481. Furthermore, Respondents invoke both contract and tort theories in *Nobers II*. Moreover, ERISA section 510 subsumes both contract and tort

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[1] Neither the district court opinion nor the state court opinion cited by Respondents has any bearing here. (*See* Res.Br. at 3.) The district court opinion is obviously from an inferior court, and in any event the excerpt Respondents quote does not represent a judicial holding, but merely describes how Respondents couched their state court claims in *Nobers II*. The state court opinion cited by Respondents is equally unavailing, since Petitioners were not parties or privies to that lawsuit, and since the state court is simply without power to confer jurisdiction upon itself. *See NGS American, Inc. v. Barnes*, 1992 U.S. Dist. LEXIS 17080, at *22 (Oct. 8), *appeal filed*, No. 92-CV-8612 (5th Cir. Nov. 4, 1992); *see also Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987).

claims.[2] *See Tolle v. Carroll Touch, Inc.*, 977 F.2d 1129, 1137 (7th Cir. Oct. 20. 1992).

The real question here is whether, given an obvious and correct finding of preemption and exclusive federal jurisdiction, the federal courts are empowered to enjoin state court proceedings that interfere with the exercise of exclusive federal jurisdiction. The resolution of this question is somewhat like the golden spike that finally joined the transcontinental railroad. This Court must determine whether injunctive relief is available to fully implement the preemption and jurisdictional scheme set forth in ERISA.

To categorically deny the federal courts the remedy of injunctive relief to protect ERISA's exclusive federal court jurisdiction is to tacitly encourage the construction of parallel frameworks of state law governing employee benefits – a result that Congress labored to prevent. *See Ingersoll-Rand*, 111 S. Ct. at 484 (Congressional goal was to "ensure that plans and plan sponsors would be subject to a uniform body of benefit law"). This case presents the issue squarely; there are no extraneous issues which might cloud the analysis of whether injunctive relief should be available to enforce ERISA's exclusive jurisdiction, and to foster the continued development of a uniform body of federal law. Therefore, this Court should grant *certiorari*.

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[2] This Court should not be swayed by Respondent's misleading argument that *Nobers II* is an action on an employment contract. (Res.Br. at 3.) Respondents were terminated because their employer closed the facility where Respondents were employed. *Nobers II* is obviously not a case involving anticipated continued employment, and indeed Respondents seek nothing in the way of future employment rights. The sole consequence of the allegedly wrongful failure to return Respondents to the bargaining unit is that Respondents are participants receiving benefits from the Salaried Plans, rather than the Collective Bargaining Unit Plans. Respondents seek the benefits provided by the latter Plans. As noted in the Petition for Certiorari, at 28-30, this is as purely a benefits rights question as can be postulated.

2. ONLY THE FEDERAL DISTRICT COURT HAS JURISDICTION TO CONCLUSIVELY DETERMINE THE RIGHTS AND LIABILITIES AT ISSUE IN *NOBERS II*

Respondents argue that a state court judgment in *Nobers II* "will not conclude the rights and liabilities of Petitioner benefit plans which are not parties to that action[,]" and that it "will not determine Petitioners' obligations." (Res.Br. at 4.) Respondents fail to apprehend that a state court judgment addressing Respondents' self-styled "contract" and "tort" claims in *Nobers II* can potentially (1) give rise to a prohibited transaction which will adversely affect the Plans; (2) cause the Plans to become liable to Respondents for benefits; and/or (3) require interpretations of the Petitioner Plans that are properly the province of the Plan administrators.

First, a state court judgment in favor of Respondents in *Nobers II*, though entered without jurisdiction, could cause a prohibited transaction in violation of ERISA and the Internal Revenue Code. If the state court defendants are found liable, any adjustment of the liability assessed against them to account for benefits received under the Salaried Plans could be characterized as a use of Plan assets benefiting a party in interest. This is a prohibited transaction. *See* ERISA sections 3(14), 406(a)(1)(D) and 502(i) & (l); Internal Revenue Code section 4975(c)(1)(D). The panel below erroneously discounted this possibility (*see* App. at 20a), failing to appreciate that federal agencies may not be so quick to disregard statutory violations. Furthermore, the state court defendants (Crucible and Colt) cannot implead the federal agencies in the state court action to bind the federal agencies to a judicial resolution of the dispute. *See Federal Nat'l Mortg. Ass'n v. Le Crone*, 868 F.2d 190, 193 (6th Cir.), *cert. denied*, 493 U.S. 938 (1989) (jurisdiction to review federal agency actions is implicitly limited to the federal courts).

Second, Respondents assume too much when they suggest that the state court judgment will not directly determine the liabilities of the Petitioner Plans. The prayer for damages in Respondents' state court complaint does not foreclose the possibility that the state court may ultimately order specific

performance of the alleged contract – ordering the employer to perform by returning Respondents to the bargaining unit so that Respondents may become eligible to receive Collective Bargaining Unit Plan benefits. It does not matter whether specific performance is an unlikely outcome. The point is that injunctive relief should not be categorically withheld on an assumption that the state court here – or any state court at any time – will only award damages rather than specific performance. This is too much to presume.

There is a yet another route by which the Plans might become liable as a result of a state court judgment in *Nobers II*. Respondents allege that they had a right to be reclassified as bargaining unit employees, or alternatively to be treated "as if" they had been reclassified as bargaining unit employees.[3] If the state court agrees with them, is the administrator of the Collective Bargaining Unit Plans compelled to treat Respondents as participants in the Collective Bargaining Unit Plans? *See Eckersley v. WGAL TV, Inc.*, 831 F.2d 1204, 1210 (3d Cir. 1987). Could Respondents, in effect, recover *both* damages *and* benefits? If not, why not? Such a scenario clearly subjects the Plans and the Plans' sponsor to a parallel and conflicting framework of state law. *See Ingersoll-Rand*, 111 S. Ct. at 484.

Third, if the state court finds that Respondents had a right to be returned to the bargaining unit, it will have to interpret the terms of the Petitioner Plans to determine what rights Respondents would have had. Because any "damages" award must be determined by reference to the terms of the Plans, the state court cannot provide a remedy to Respondents without usurping the authority of Petitioner fiduciaries to interpret the terms of Petitioner Plans.[4]

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[3] Respondents' state court complaint in *Nobers II* recites that they had a right "to return to the bargaining unit from which promoted at the time of layoff, or to be treated as a bargaining unit person in layoff status."

[4] State courts have concurrent jurisdiction only over claims for benefits against plans. ERISA section 502(a)(1)(B) and (e)(1). Such claims are governed, first by the terms of the plan itself, and second by the plan administrator's initial determination to the extent authorized by the plan. *See Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989). Any judicial

This Court should grant *certiorari* to forestall the state courts from unwittingly creating a morass of problems for qualified plans through the well-meaning but unauthorized exercise of non-existent jurisdiction, and to delineate the ability of the federal courts to protect and implement their own exclusive jurisdiction.

3. As Non-Parties To The State Court Action, Petitioners Are Entitled To Injunctive Relief

Respondents simultaneously argue that Petitioners (1) are foreclosed from seeking an injunction because of previous decisions rendered in the course of *Nobers II*, yet (2) cannot obtain injunctive relief because they are not parties to the state court action in *Nobers II*. (Res.Br. at 3.) This is a double edged sword indeed.

No state court decision can foreclose Petitioners from obtaining an injunction, since the state court lacks jurisdiction. "[S]tate courts lack jurisdiction to decide the dispositive issue, whether ERISA preempts this state [law] []." *NGS American*, 1992 U.S. Dist. LEXIS 17080, at *22.

Furthermore, the fact that Petitioners are not parties or privies to the state court litigation is all the more reason why Petitioners ought to be able to obtain injunctive relief. This calls into play the so-called "stranger" exclusion from the Anti-Injunction Act articulated in *County of Imperial v. Munoz*, 449 U.S. 54 (1980), and in *Hale v. Bimco Trading, Inc.*, 306 U.S. 375 (1939). As the Third Circuit summarized: "The term 'stranger' describes a litigant who, neither a party nor in privity with a party to the state court action, is not bound by those previous proceedings." *United States Steel Corp. Plan for Employee Ins. Benefits v. Musisko*, 885 F.2d 1170 (3d Cir. 1989), *cert. denied*, 110 S. Ct. 1121 (1990) (citations omitted). Such a person may obtain a federal injunction against enforcement of a state court judgment; the Anti-Injunction Act

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review, whether by a state or a federal court, is limited and circumscribed by the terms of the plan and the administrator's exercise of discretion. To provide a remedy in *Nobers II*, however, the state court will have to independently interpret terms such as "service" and "compensation." The state court's interpretation might contradict interpretations of the Plans' fiduciaries and create troublesome precedent for future interpretations.

is inapplicable to bar the injunction. *Munoz*, 449 U.S. 54. If a "stranger" can obtain an injunction against enforcement of a state court judgment, the same "stranger" should be able to enjoin state court litigation before a judgment issues. *See Hill v. Martin*, 296 U.S. 393, 403 (1935) (the term "proceedings" in the Anti-Injunction Act is comprehensive, encompassing "all steps taken or which may be taken in the state court or by its officers from the institution to the close of the final process"). As "strangers" to the state court litigation, Petitioners are all the more empowered to obtain injunctive relief.

B. An Injunction Is Authorized to Protect or Effectuate Prospective and Prior Judgments of the District Court

Respondents confusedly argue that (1) there has been no decision by the federal courts to protect or effectuate; and (2) relief from error is available through the state appellate court system. (Res.Br. at 4.) As to the first point, the federal district court will ultimately issue a declaratory judgment in this case. Thus, there is a *prospective* federal judgment which the district court is empowered to enforce. To deny the potential for injunctive relief at this juncture is premature. As to the second point, ERISA does not empower Petitioners to obtain relief through the state court system; Petitioners *must* apply to the *federal* courts for declaratory judgment and injunctive relief to enforce the terms of the Plans and ERISA. ERISA section 502(a)(3) and (e)(1).

Respondents also argue, misleadingly, that Petitioners seek the "same injunction" that the district court denied to the state court defendants in *Colt Industries, Inc. v. Nobers*, No. 85-563 (W.D. Pa. Aug. 12, 1985), *aff'd without opinion*, 787 F.2d 581 (3d Cir. 1986). (Res.Br. at 4.) There, Colt and Crucible attempted to enjoin *Nobers II* to "protect or effectuate" the *prior* federal court judgment in *Nobers I*. (*See* Petition for Certiorari, at 4-5.) Although the district court erroneously denied injunctive relief to Colt and Crucible (*only* as to relitigation of *Nobers I*) Petitioners are not bound by that decision because they were *not* parties or privies to that lawsuit. *See Montana v. United States*, 440 U.S. 147, 153-55 (1979). The panel below erred on this point. (*See* App. at 21a.)

C. An Injunction Is Expressly Authorized in Aid of Exclusive Federal Jurisdiction under ERISA

ERISA's plain language and its legislative history (*see* Petition for Certiorari, at 8-11) are fully adequate to support injunctive relief in aid of exclusive federal jurisdiction under the first Anti-Injunction Act exception. *Mitchum v. Foster*, 407 U.S. 225, 237 (1972) (none of the statutes previously found to "expressly authorize" injunctive relief have an explicit reference to the Anti-Injunction Act). This point alone, which Respondents are unable to refute (*see* Res.Br. at 5), is sufficient reason both to grant *certiorari* and to make injunctive relief available. Therefore, this Court should grant *certiorari* to clarify that injunctive relief is "expressly authorized" within the meaning of the Anti-Injunction Act, to protect the exclusive jurisdiction of the federal courts under ERISA.

D. Petitioners Brought this Lawsuit for Declaratory Judgment and Injunctive Relief at an Appropriate Time and Have Shown Adequate Grounds for Relief

Respondents assert that this action is "plainly anticipatory," but in virtually the same breath they question, "[w]here have Petitioners been since 1984?" (*Id.*) Thus, Respondents have not sorted out whether they believe Petitioners commenced this lawsuit for declaratory judgment and injunctive relief too soon or too late. Petitioners brought suit at the time they deemed appropriate and practicable based on their observations and judgments regarding the course of litigation, and taking into consideration the cost of litigation versus the need to have their obligations clarified.

Respondents accuse Petitioners of somehow acting in the interest of Colt and Crucible. (Res.Br. at 5.) Their arguments here, too, are empty. Petitioners are presently operating under the premise that Respondents' rights and status entitle them to participate in, and to receive benefits under the terms of, the Salaried Plans. This is the best assessment of Petitioner fiduciaries, based on the information available to them. If Respondents do have the rights they allege in *Nobers II*, then those rights evidently arise from facts and information presently unavailable to Petitioners.

Petitioner fiduciaries have waited at length for Respondents to assert administrative claims, and to set forth the basis for their claims, so that Petitioners may evaluate whether Respondents are entitled to benefits under the terms of the Collective Bargaining Unit Plans, rather than the Salaried Plans. This is not an optional choice that can be rejected. It is the procedure mandated by the Plans and by ERISA. *See* ERISA section 503; *Bruch*, 489 U.S. 101.

There is no requirement that Petitioners show "irreparable harm" as Respondents suggest. (Res.Br. at 5.) Under traditional trust law as well as ERISA, fiduciaries may seek guidance and equitable relief to determine their obligations and duties. "A trustee who is in doubt as to the interpretation of the instrument can protect himself by obtaining instructions from the court". *Bruch*, 489 U.S. at 112 (citation omitted).

E. This Case Implicates All Three Anti-Injunction Act Exceptions

Respondents err in asserting that the Anti-Injunction Act presents an "absolute bar against federal injunctions." (Res.Br. at 5.) The Anti-Injunction Act contains three explicit statutory exceptions. *See generally Mitchum*, 407 U.S. at 236. Because this case implicates all three exceptions to the Anti-Injunction Act, and implicates the "protect and effectuate" exception as to both prior and prospective federal judgments, this case is an eminently suitable vehicle for this Court to consider whether injunctive relief is available to enforce ERISA's exclusive federal court jurisdiction.

F. Conclusion

Petitioners have presented sound and convincing reasons why this case is appropriate for *certiorari*, which Respondents have failed to refute. For all the reasons set forth in this Reply, and in the Petition for Certiorari, this Court should grant *certiorari*.

Respectfully submitted,

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